

# Governor Signs Important Changes to the Missouri Human Rights Act into Law

## Labor & Employment Law Update

on July 10, 2017

Missouri Governor Eric Greitens recently signed into law changes to the Missouri Human Rights Act (MHRA), bringing it in line with federal employment law standards. The changes take effect August 28, 2017.

The most significant change is the return of the motivating factor standard to Missouri discrimination claims. Prior to 2007, MHRA claims, like federal claims, were analyzed to determine whether a protected characteristic “motivated” the challenged employment decision. In 2007 the Missouri Supreme Court, relying on MHRA’s definition of “discrimination” as well as a pattern jury instruction, held that an employee raises a triable issue of fact by providing evidence that a protected characteristic “contributed” to the employment decision. The holding was interpreted to allow for liability if a prohibited characteristic contributed to the decision *in any way whatsoever*, no matter how trivial a role it played. As a result, summary judgment was rarely, if ever, granted.

The new amendments help employers by bringing the MHRA back in line with federal law. Effective August 28, 2017, employers can be held liable only when the employee provides evidence that a protected classification “*actually* played a role” in the employment decision and “had a determinative influence on the adverse decision or action.”

Other important features of this bill include:

- Removing individual liability for employment discrimination
- Strengthening the religious organization exemption
- Implementing damage caps based on number of employees
- Preserving timeliness as a complete jurisdictional defense
- Requiring the “business judgment” instruction and abrogating “contributing factor” instructions
- Requiring the Commission to abide by the statutory time frame when issuing Right to Sue Notices upon request
- Codifying wrongful discharge claims and applying the motivating factor standard to whistleblower claims

- Defining several key terms in an attempt to clarify the new heightened standard of proof

This is great start, but the law will not solve all problems from the MHRA currently facing Missouri employers. The law defines several key terms with the likely intent of clarifying the heightened standard adopted. However, additional definitions added to the text of the MHRA which are not contained in its federal counterparts could lead to unintended expansions. We can expect that these and other aspects of this new legislation to be aggressively litigated.

Despite any shortcomings, this bill marks a significant step in returning the MHRA back in line with its federal counterparts. In order to take advantage of the amendments, employers should work with experienced labor and employment counsel to fine tune their policies and processes *before a claim arises* so they are well poised to defeat unfounded claims at the summary judgment stage whenever possible. Regular training, well supervised performance appraisal systems, and comprehensive documentation systems that preserve records will not only allow an employer to defeat unfounded discrimination claims at the summary judgment stage (or better yet, at the administrative stage), but will also improve the quality and performance of your workforce.

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