

Missouri Supreme Court Opens New Door To LGBTQ Protections Under The Missouri Human Rights Act

Labor & Employment Law Update

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In a pair of rulings handed down on Tuesday, the Missouri Supreme Court expanded the reach of the Missouri Human Rights Act ("MHRA") to encompass, under certain circumstances, LGBTQ individuals and additional types of evidence that can support MHRA discrimination and retaliation claims. Both cases – *Lampley, et al v. Missouri Comm'n on Human Rights, et al* and *R.M.A., et al v. Blue Springs R-IV Sch. Dist., et al* – should have a significant impact on employers in Missouri and how they evaluate the risks of employment actions against LGBTQ individuals moving forward.

By its text, the MHRA makes it unlawful for an employer to discriminate or retaliate against an employee with respect to compensation, terms of employment, or privileges of employment because of that employee's race, color, religion, national origin, ancestry, disability, age, or sex. The MHRA does not expressly prohibit discrimination or retaliation based on an employee's **sexual orientation**. Missouri courts have interpreted the MHRA accordingly.

In *Lampley*, the complaining employee was gay, but his sexual orientation was not the issue presented to the court. Instead, the plaintiff filed a Charge of Discrimination complaining that his employer, the Missouri Department of Social Services, subjected him to **sex** discrimination and retaliation, which is prohibited under the MHRA. The plaintiff asserted he was subjected to sex discrimination and harassment at work because "he does not exhibit the stereotypical attributes of how a male should appear and behave" and that other similarly-situated co-workers (i.e., non-gay co-workers who exhibited stereotypical attributes) were treated differently. He also complained that he received lower performance evaluations at work as retaliation for his complaints about the alleged harassment. His co-worker and co-plaintiff also filed a Charge of Discrimination, complaining that she was discriminated against based on her association with him.

The court in *Lampley* distinguished claims of discrimination based on sex-based characteristics from discrimination based on sexual orientation. According to the court, the plaintiff's sexual orientation was "merely incidental" to his sex

discrimination complaint. Since the plaintiff did not actually allege he was discriminated against based on his sexual orientation, he could pursue his claims under the MHRA since “stereotyping” can give rise to an inference of discrimination against a member of a protected class, and is considered an unlawful hiring practice by the Commission’s own regulations.

Whether intended or not, it is easy to see that the court’s ruling in *Lampley* now provides LGBTQ employees (and their attorneys) a clearer path to pursue discrimination and retaliation claims under state law, framing their claims as sex-based rather than sexual orientation-based. This ruling, coupled with the court’s contemporaneous ruling in *R.M.A.*, in which the court vacated a lower court’s dismissal of a transgender student’s MHRA sex discrimination claim against his school for refusing him access to the boys’ restrooms and locker rooms, constitutes a clear victory for LGBTQ advocates.

The Missouri Supreme Court sent a message on Tuesday with regard to LGBTQ rights. Employers in Missouri should take heed.

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