

## Publications

### *Labor and Employment Alert: Missouri Laws Become More Employer-Friendly*

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The Missouri legislature recently enacted significant changes affecting Missouri's discrimination, minimum wage laws and whistleblowing laws. The changes raise the bar on proving discrimination and whistleblower claims; cap compensatory and punitive damage; eliminate individual liability for supervisors; and preempt local minimum wages. They become effective on August 28, 2017.

### **Causation Standard for Discrimination Claims**

In 2007, the Missouri Supreme Court made it easier for plaintiffs to prove discrimination claims by holding that plaintiffs need only show that their protected characteristic was a "contributing factor" to the adverse action taken against them. Now, as in discrimination suits under federal law, plaintiffs must show that an employer's adverse action was the "motivating factor." This means the plaintiff must prove that "the employee's protected classification actually played a role in the adverse action or decision and had a determinative influence on the adverse decision or action." Additionally, Missouri law now expressly adopts the familiar burden-shifting standard followed by the federal courts in discrimination cases (prima facie case – legitimate reason – pretext).

### **Individual Liability in Discrimination Claims**

The changes to the Missouri Human Rights Act eliminate individual liability for managers and supervisors. Not only does this protect these employees from liability, it makes it more difficult for plaintiffs to remain in state court by naming a manager in a lawsuit in an effort to destroy diversity of citizenship.

### **Damage Caps Under the Human Rights Act**

Previously, punitive damages under the Missouri Human Rights Act were capped at \$500,000 or five times the actual damages and attorney's fees recovered. Now, damages cannot exceed actual back pay (plus interest), attorney's fees, and a fixed amount as follows: (1)

more than five but fewer than 100 employees: \$50,000; (2) more than 100 but fewer than 200 employees: \$100,000; (3) more than 200 but fewer than 500 employees: \$200,000; and (4) more than 500 employees: \$500,000.

## Whistleblower Protection

Missouri also enacted a Whistleblower Protection Act (WPA), which codifies the wrongful discharge public policy exception to at-will employment for whistleblowers. To be protected from discharge under the WPA, an employee must: (1) report his or her employer's unlawful act to the "proper authorities"; (2) report his or her employer's serious misconduct in violation of a clear mandate of public policy found in the constitution, statute, or regulation to the proper authorities; (3) refuse to carry out a directive by his or her employer that would be unlawful; or (4) engage in conduct that is otherwise protected by law. "Proper authorities" means a governmental or law enforcement agency or an officer of the employer, the employee's supervisor, or a human resources representative employed by the employer. An employee is not protected if he or she is a supervisor, executive or officer and the unlawful act or serious misconduct concerns matters upon which the employee is employed to report or provide professional opinion, or if the person to whom the employee makes the report is the person whom the employee claims to have committed the violation.

The WPA creates a private right of action for whistleblowing claims unless another state or federal law or "regulatory scheme" provides a private right of action, and the WPA is meant to be the "exclusive remedy" for whistleblowing claims. A court may award back pay and reimbursement for medical bills directly related to violation of the WPA; the court may not award punitive damages. Instead, if an employee proves the employer's conduct was "outrageous because of the employer's evil motive or reckless indifference," then the court may award double damages. Additionally, the prevailing party may be awarded costs and reasonable attorney fees.

## Minimum Wage Preemption

Finally, Missouri enacted a law that "preempts and nullifies" any local minimum wage law and further prohibits cities from enacting a minimum wage that exceeds the Missouri minimum wage (currently set at \$7.70 per hour). St. Louis had enacted its own \$10 minimum wage, which would have risen to \$11 in January 2018. Not only does the new law preempt future minimum wage laws at the local level, but it permits employers to roll-back their wage scales to the state minimum wage level. An employer who chooses to do so must give its employees at least 30 days' notice.

## Conclusion

These recent enactments represent significant and far-reaching changes to Missouri's employment laws. Contact your Vorys lawyer if you have questions about how these laws may affect your operations in Missouri.