

Service

Labor & Employment

Missouri Court Decisions Continue Pro-Plaintiff Trend

In two recent decisions, the Missouri Courts of Appeal in Kansas City and Springfield continue the trend of expanding the rights of employees claiming employment discrimination brought under the Missouri Human Rights Act (MHRA).

Leeper v. Scorpio Supply IV, LLC

In a case that invokes the maxim “Bad Cases Make Bad Law,” *Leeper v. Scorpio Supply IV, LLC*, the Missouri Court of Appeals for the Southern Division found individual liability for the Managing Member/Owner of two LLCs he incorporated for two of his auto parts stores. One of the female plaintiffs worked at both stores (Monett and Joplin), with the other plaintiff working only in the Joplin store. Both alleged and proved to the jury’s satisfaction that the Sales Supervisor, a 30-year friend of the Managing Member who was hired to supervise all of the stores, had sexually harassed them and created an unlawful, sexually hostile work environment. The Managing Member had not developed or published any sexual harassment policies for the stores. There was no mechanism in place for the plaintiffs to report allegations of sexual harassment. Despite these obstacles, the plaintiffs did eventually report the misconduct of the Sales Supervisor to the Managing Member. Evidence suggested that the Managing Member was not aware of the alleged conduct until the employees complained.

Because of the cost of having an external firm conduct an investigation into the plaintiffs’ allegations, and despite his lack of training or experience in the law or the conduct of an investigation, the Managing Member undertook the investigation himself. His investigation was limited to five-minute meetings with each of the plaintiffs, the focus of which was, in the words of one of the plaintiffs “what us girls had caused to bring it on.” He then asked his friend, the Sales Supervisor, about the women’s allegations. The supervisor denied the

allegations and denied any intent to harass the women. On the basis of these inquiries, the Managing Member concluded that the complaints could not be substantiated, that the two plaintiffs were "touchy-feely people who did not mind being touched and rubbed, and that they were both upset about not receiving raises." He took no actions against the supervisor and made no effort to monitor the supervisor's conduct after the investigation, conduct that continued to be inappropriate.

On the basis of this evidence, the jury found in favor of both plaintiffs and awarded each plaintiff general damages in the amount of \$10,000 against all the defendants jointly and severally, punitive damages separately against the LLCs in the amount of \$50,000, against the harassing supervisor in the amount of \$25,000 and against the Managing Member in the amount of \$50,000. The absence of a sexual harassment policy was a significant factor in the court's decision to submit and affirm the award of punitive damages against the Managing Member. Attorney's fees were awarded to the plaintiffs in the amount of \$114,540, as well as court costs. The Court of Appeals concluded that the Managing Member was an "employer" vicariously liable for the sexual harassment committed by one of the company's supervisors.

Hervey v. Missouri Department of Corrections

The case from the Court of Appeals in Kansas City is significant for its inclusion of an award of attorney's fees in calculating the cap on punitive damages under the MHRA. Section 510.265 of the Missouri revised statutes, which applies to employment discrimination claims, caps the amount of punitive damages as follows:

No award of punitive damages against any defendant shall exceed the greater of:

1. \$500,000; or
2. Five times the net amount of the judgment awarded to the plaintiff against the defendant.

The issue in *Hervey v. Missouri Department of Corrections* was whether the calculation of "net amount" included or excluded an award of attorney's fees. This was a significant issue because, as seen in *Leeper* discussed above, the attorney's fees award is typically a large number, often equaling or exceeding the amount of damages awarded. In holding that attorney's fees are to be part of the calculation of the cap, the Court of Appeals concluded that the fee shifting provisions of the MHRA furthers the purpose of punitive damages "to inflict punishment and to serve as an example and a deterrent to similar conduct." In *Hervey*, the court upheld a punitive damages award of \$1,303,632.50, an amount that was five times the award of \$127,056 in actual damages, \$97,382.50 in attorney's fees and \$36,288 in front pay. Had the attorney's fees been excluded from the "net

amount” calculation, the award would have been capped at \$816,720, a difference of nearly \$500,000.

What the *Leeper* Decision Means to You

It is imperative that employers (in Missouri the MHRA defines “employer” as one having six or more employees) have an effective policy in place against discrimination and harassment, that they train their managers and supervisors of their responsibilities and obligations under state, federal and local employment discrimination laws, and provide appropriate means by which concerns or complaints about discriminatory conduct can be safely raised, proper investigations undertaken and appropriate corrective actions taken. If nothing else, this decision should reinforce in every business owner who has a managerial role in his or her company that personal individual liability for damages, including punitive damages could be awarded against them under MHRA.¹ The same is true for supervisors, including managers and executives.

What the *Hervey* Decision Means to You

Attorney fees awards are a function of hours reasonably spent in connection with the case times a reasonable hourly rate for lawyers of comparable skill and experience. Prevailing plaintiffs may recover their attorneys’ fees; prevailing defendants may not. The practical impact of the decision is to increase, by a significant amount, the potential cap set by Missouri law on punitive damages. The potential for greater punitive damage awards increases the downside risk of taking the matter to trial, at least when the case involves bad facts. Also, plaintiffs interested in jackpot awards may now be less likely to settle. In other words, the cost of litigation has been increased.

¹ Liability for individuals as well as the employing entity arises under the MHRA by virtue of the decision of the Missouri Supreme Court in *Hill v. Ford Motor Co.* (2009). The statute is clear that the MHRA is intended to reach not just the corporate or public employer but any person acting in the interest of the employer. A supervisory employee clearly falls into that category.

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