

LEGAL UPDATES

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Missouri Supreme Court Narrowly Construes MHRA and Decides that a Request for Accommodation Does Not Constitute Protected Activity

Key Points

To assert a claim of discrimination based on retaliation under the Missouri Human Rights Act (MHRA) an employee must engage in a protected activity in which the employee opposes a practice prohibited under the MHRA or participates in the pursuit of protections under the MHRA.

The act of requesting an accommodation does not constitute protected activity and is insufficient by itself to support a claim of retaliation under the MHRA.

On January 14, 2020, in the decision *Lin v. Matthew J. Ellis and Washington University in St. Louis*, the Missouri Supreme Court, sitting en banc, issued a unanimous opinion in a case of first impression, holding that a request for a disability accommodation does not constitute protected activity and is insufficient, by itself, to support a claim of retaliation under the MHRA. The decision is significant because it departs from federal case law, including Eighth Circuit decisions, which interpret analogous language in the Americans with Disabilities Act (ADA) to support a retaliation claim.

Brief facts giving rise to claim of retaliation

Dr. Lin (Lin), a university research scientist who worked in a lab at Washington University (University) requested and received accommodations for a physical disability that prevented her from performing routine duties related to her position. She was later terminated from her position when the grant funding for her position expired.

A request for accommodation is not protected activity under the MHRA

Section 223.070.1(2) of the MHRA provides:

It shall be unlawful discriminatory practice for an employer . . . to retaliate or discriminate against any other person because such person has opposed any practice prohibited by the chapter or because such person filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, or hearing conducted pursuant to this chapter.

The Missouri Supreme Court recognized that the plain language of §223.070.1(2) of the MHRA provides a cause of action for an individual who suffers retaliation because they have either *opposed* an unlawful discriminatory practice or *participated* in the procedures available to claimants alleging discrimination under the MHRA. The Court also reviewed federal court decisions which interpreted substantially similar language in the ADA and which consistently found that a request for accommodation is protected activity that supports a claim for retaliation under the ADA. Many of those same federal courts, however, also recognized that the plain language of the ADA did not support such an interpretation but based their decisions on inferred Congressional intent.

In construing Missouri law, however, the Court declared that they were not bound by federal law that was inconsistent with the plain meaning of the state statute as enacted by the Missouri legislature. Instead, the Court determined that a “mere request for accommodation” does not fall within the “opposition or participation clauses of section 213.070.1(2)” and the Court refused to “read into a statute” such legislative intent. As a result, the Court held that a request for accommodation cannot support a claim for retaliation, and that Lin failed to state a claim for relief under the MHRA.

Although Lin had argued before the Court that her repeated requests for accommodation demonstrated her opposition to the University’s alleged violation of her rights under the MHRA, the Court dismissed this argument noting that Lin had failed to assert such allegations in her pleadings and also had received accommodations for her disability pursuant to her requests until termination.

What this means to you

This decision represents a significant difference in the interpretation of Missouri’s discrimination law and federal discrimination law. Individuals who claim retaliation under the MHRA must factually support their petition with allegations that the retaliation was due to their opposition to an unlawful practice or their participation in a matter brought under the MHRA. Simply requesting an accommodation, by itself, is insufficient to support a claim of retaliation under the language of the MHRA. It is conceivable, however that a request for accommodation could be evidence of retaliation if it is alleged together with other conduct that would support a claim of retaliation under Missouri law.

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Additionally, individuals may continue to assert a claim of retaliatory discharge based solely on a request for accommodation under the ADA, a federal law.

Contact us

If you have questions about this decision or your obligations under the Missouri Human Rights Act, contact Joe Glynias or your Husch Blackwell attorney.

Tracey Oakes O'Brien is a contributing author of this content.