

LEGAL UPDATES

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# Raise It or Lose It: Missouri Supreme Court Requires Timeliness Arguments *Before* Lawsuit Is Filed in Human Rights Claims

The Missouri Supreme Court recently issued an opinion<sup>1</sup> that eliminates the well-established approach to defending against Missouri Human Rights Act (MHRA) charges that were untimely filed.

In a change of course, the court held that an employer must first raise the issue of untimeliness during the Missouri Commission on Human Rights (MCHR) investigation – even if another agency is leading the investigation. Failing this, the employer must proceed to court within 30 days of receiving the erroneous right-to-sue for judicial review of the agency’s decision. If an employer fails to follow this process, courts will no longer entertain dismissing claims based upon an affirmative defense that the charge was untimely filed. Previously, an employer could raise this affirmative defense for the first time during litigation.

Under Section 213.075 of the MHRA, an aggrieved person must file a complaint with the MCHR within 180 days of the alleged act of discrimination. In the case decided by the Supreme Court, it was undisputed that the plaintiff failed to file a charge within 180 days. She filed 230 days after her termination date. Four and a half months after the plaintiff filed her charge, the MCHR issued a right-to-sue letter.

The Circuit Court granted the employer’s motion for summary judgment. On appeal, the plaintiff argued that “any challenges relating to the timeliness of the prefiling proceedings before the commission were not raised before the agency and were not properly before the circuit court.” The Missouri Supreme Court agreed with the plaintiff’s argument that the commission’s issuance of

the right-to-sue letter meant that the commission *implicitly* found it had jurisdiction over her claims and, therefore, they were timely filed. The court reasoned that the commission's regulation directs it to dismiss or close a complaint at any stage for lack of jurisdiction or in the absence of any remedy available to the complainant. Hence, the commission "was required to determine its own jurisdiction even if it did not make a decision on the merits of" the claim. If the employer did not agree with the agency's implicit (or explicit) findings, it was obligated to file suit within 30 days for judicial review of the agency's decision to issue the erroneous right to sue letter.

The Missouri Supreme Court also relied on Section 213.111 of the MHRA in its opinion, which states, "after one hundred eighty days from the filing of a complaint alleging an unlawful discriminatory practice ... if the investigation isn't complete ... the commission shall issue to the person claiming to be aggrieved a letter indicating his or her right to bring a civil action within ninety days of such notice against the respondent named in the complaint." In reaching its decision, the court held it could not read into this statutory language "timely complaint." Instead, the court concluded that, "When a statute speaks in jurisdictional terms or can be read in such terms, it is proper to read it as merely setting statutory limits on remedies or elements of claims from relief that courts may grant."

The employer in this case did not raise the issue with the MCHR and did not seek judicial review of the issuance of the right to sue. As a result, the court reversed summary judgment for the employer and held that the employer was now precluded from relying on untimeliness as grounds for dismissal of the claims.

<sup>1</sup> All references and quotations herein are from the Missouri Supreme Court case *Farrow v. Saint Francis Medical Center, et al*, 2013 WL 4520993, pp. 1-7 (Aug. 27, 2013).

### **What This Means to You**

Employers must now determine from the outset whether certain technical arguments should be raised with the commission. Employers will need to raise these arguments even if another agency (such as the Equal Employment Opportunity Commission) takes the lead on the investigation. In addition, employers' human resources departments should be trained on how to recognize and handle timeliness issues.

If the MCHR erroneously issues a right-to-sue notice (or the MCHR issues it before the employer can raise the issues), employers who handle their own charges will now have to seek judicial review within 30 days of the defective right-to-sue being issued. This will be the only way to ensure that an employer preserves all of its legal arguments should the matter proceed to litigation based upon an MHRA claim.

To determine if additional steps need to be taken, employers should re-examine their open charges and charges where the MCHR recently issued a right-to-sue. Without taking these steps, it now appears that an employer will lose the ability to dispose of these cases using a legal theory that was once well-settled in Missouri.

## **Contact Information**

For more information concerning this or other issues affecting labor and employment, please contact your Husch Blackwell attorney or an attorney in our Labor & Employment practice group.