

Missouri Human Rights Act Changes

The Missouri legislature made big changes to the Missouri Human Rights Act (MHRA) that will go into effect on August 28. The MHRA gives employees a right to sue school districts and other employers for unlawful discrimination based on their disability, race, color, religion, nation origin, ancestry, sex, or age. But when is a decision or action based on an employee's disability, race, or other trait? Is a school district or administrator liable to an employee for discrimination if they have a legitimate reason for the decision or action?

Administrators face this difficult question with every decision that adversely affects an employee: to terminate the employee, to transfer the employee to a new school or position, to not renew their contract, or to make any other decision that the employee does not agree with.

The current standards applied by the courts have allowed employees and students to recover damages from a school district if they proved their protected trait was a "contributing factor" to a decision or action by the school district. Under this standard, every decision exposes a school district and its administrators to possible liability for discrimination. The school district or administrator may have a legitimate reason for their decision or action – to non-renew an employee for violating the school district's absence policy or for poor performance. However, a court would still impose damages against the school district or administrator for discrimination if the employee convinces a jury to infer that their disability, sex, race, age, or other protected trait was one of any number of contributing factors of the challenged decision – even if the school district or administrator would have made the same decision regardless of the employee's protected trait.

Therefore, in practice, this "contributing factor" standard was really no standard at all. Like the difficulty of proving a negative, it is difficult to prove that an employee's physical traits did not cross an employer's mind when they made a decision involving the employee.



By: Brian Mayer

The new standard will require the employee to prove that their protected trait was “the motivating factor” for a decision or action, meaning it had a “determinative influence on the adverse action or decision.” It will no longer be sufficient for the employee to prove that their trait was one of many “contributing factors” to a decision. The new standard requires the jury to determine that an employee’s physical trait actually caused the decision they are challenging – that but for the employee’s physical trait, the school district would not have made the decision they are challenging. The changes also require courts to instruct juries that they may not find a school district liable because they disagree with a school district’s decision or find the decision to be harsh or unreasonable. Together, these changes allow school districts and other employers to explain to a jury that they did not discriminate against an employee or student because they made the allegedly discriminatory decision against the employee for a legitimate reason, regardless of the employee’s disability, race, sex, or other protected trait.

Employees who bring discrimination claims will argue that a school district’s reason for a challenged decision is only an excuse – a pretext to discriminate against them based on a protected trait. Another change requires an employee who makes this argument to show evidence to support it before their claim reaches trial to avoid judgment and dismissal of their claim.

Under the changes, administrators and other employees will no longer be individually liable for violations of the MHRA and should no longer be named as individual defendants along with a school district in a lawsuit. (Employees and students may still attempt to sue administrators and other individuals for negligent supervision and other similar claims other than discrimination.)

Damages under the changes will be capped at the sum of back pay plus all other damages (including emotional and punitive damages) at an amount depending on the number of employees:

- \$50,000 for employers with fewer than 100 employees;
- \$100,000 for employers with 100-200 employees;
- \$200,000 for employers with 200-500 employees;
- \$500,000 for employers with more than 500 employees.

**For questions regarding
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Employees who do not file an administrative complaint with the MCHR within 180 days of an alleged discriminatory act would not have a right to sue. Currently, the MCHR regularly provides employees notice of a right to sue, even if they did not file a charge within 180 days of the alleged discrimination. Courts would then often ignore the employee's failure to file a complaint with the MCHR based on their "right to sue" from the MCHR. The new law will prohibit MCHR from providing employees a notice of right to sue when they failed to file a complaint in time. If an employee sues a school district without filing a complaint of discrimination with the MCHR within 180 days of an alleged act of discrimination, the law allows the court to dismiss their suit, even if they received an improper notice of a right to sue.

The MHRA changes apply to claims of discrimination brought by students, as well as employees. The MHRA allows students to sue school districts for unlawful discrimination by denying the students' benefits of their school based on their race, sex, disability, or other protected trait. Students who sue school districts for discrimination often claim they should be awarded damages for discrimination by alleging that they were harassed, that a protected trait was a contributing factor in their harassment, and that a school district's failure to promptly and effectively respond to claims of harassment denies them of the benefits of their school. The changes to the MHRA apply to these claims, including the requirement that the students' protected trait was the motivating factor for their harassment and the denial of their education.

The law affirms the right of any party to demand a jury trial in MHRA actions. Under the MHRA, Plaintiffs can obtain an award of attorney's fees if they prevail.

This section remains unchanged.

Attorneys for employees and students will challenge these changes to the Missouri Human Rights Act. How the court will apply them remains to be seen. Though the MHRA's standards and awards changed, School Districts and other employers can still be liable for unlawful discrimination and should remain diligent in maintaining their antidiscrimination policies and efforts.

- Ensure all employees have a professional and respectful work environment.
- Ensure all students have a professional and respectful educational environment
- Take prompt action to identify, investigate, and address complaints by employees and students.
- Provide frequent antidiscrimination training.

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