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News & Updates

A LAST-SECOND WIN FOR MISSOURI EMPLOYERS

With the 2017 legislative session winding down, the Missouri legislature pulled out a big win for employers with several significant changes to the Missouri Workers' Compensation Law and the Missouri Human Rights Act.

Senate Bill 66 makes several critical changes to the Workers' Compensation Law in response to recent Missouri Supreme Court decisions that created some uncertainty for employers. Senate Bill 43, on the other hand, raises the burden of proof in employment discrimination cases and should shut the door on frivolous discrimination cases against Missouri employers.

CHANGES TO THE MISSOURI WORKERS' COMPENSATION LAW

Defining Maximum Medical Improvement

The first change to the Missouri Workers' Compensation Law makes it clear that temporary total disability benefits are not owed after an injured worker reaches maximum medical improvement.

While the case law had long held that maximum medical improvement was the point at which temporary total disability benefits ended, the Missouri Supreme Court recently upended that precedent because the words "maximum medical improvement" did not appear anywhere in the law.

Now it is clear that temporary total disability benefits are only owed until an injured worker reaches maximum medical improvement under the legal definition.

Time Limits on Disability Rating Counters

The second change provides that, if the injured worker does not counter an employer's permanent partial disability rating within 12 months from the initial rating, the judge is required to approve a compromise settlement based on the employer's disability rating unless the injured worker makes a showing of "extenuating circumstances."

This provides employers with a mechanism to put pressure on injured workers and their attorneys to get a rating sooner rather than later.

Positive Controlled Substance Test Results Reduce Benefits Owed

The third critical change is that any positive test for a non-prescribed controlled drug gives the employer a presumption that the drug was in the injured worker's system at the time of the accident or injury, and that the injury was sustained in conjunction with the use of the drug. If the injured worker is unable to rebut that presumption, the employer is entitled to a 50 percent reduction in benefits owed.

Prior to this statutory change, the employer had to prove the injured worker was impaired at the time of the accident or injury, a burden that the Commission did not take lightly.

Voluntary Separation Leads to Loss of Benefits

Another important change is that if an injured worker voluntarily separates from employment when the employer had work available within the injured worker's restrictions, no temporary disability benefits are owed. This change provides some clarity in what had previously been an area of some confusion.

Proving Conduct Is a "Motivating Factor" in Retaliatory Discharge Claims

Finally, Senate Bill 66 raises the burden of proof for workers' compensation retaliatory discharge claims. Following the Missouri Supreme Court's 2014 decision in the *Templemire* case, an employee was only required to prove that the exercise of his or her rights under the law was a "contributing factor" for the employer's adverse employment action.

The new bill abrogates *Templemire* and requires an employee prove that his or her protected conduct was a "motivating factor" for the adverse employment action — meaning that the employee's protected status actually played a role in the discharge or discriminatory act and had a determinative influence on the discharge or discriminatory act.

CHANGES TO THE MISSOURI HUMAN RIGHTS ACT

For several years now, Missouri has been one of the easiest places to sue an employer and win. This employee-friendly atmosphere was due in large part to several court-created mandates. Senate Bill 43 changes the Missouri Human Rights Act (MHRA) to make it a little more difficult for employees to hold employers liable for alleged discrimination.

Elimination of Supervisor Liability

First, the new law eliminates liability for supervisors and managers.

Damages Caps

Second, it adds damages caps to MHRA claims. The new law limits damages for employment claims to back pay and up to $500,000 in additional compensatory and punitive damages for large employers. The damages cap scales down to $50,000 for small employers.

Clear Definition of the "Business Judgment Rule"

Third, it requires the use of a "business judgment rule." While the act does not define "business judgment," federal courts in Missouri have used the following instruction: "You may not return a verdict for the plaintiff just because you might disagree with the defendant's decision or believe it to be harsh or unreasonable."

This should limit the effectiveness of plaintiff's attorneys' oft-used tactic of asking the jury to focus on fairness, rather than an actual discriminatory act.

Whistleblower Law Officially Codified and Clarified

The new law also codifies Missouri's whistleblower law, which had previously been a judicial interpretation of the prior law. On one hand, it maintains the "contributing factor" burden of proof requirement and allows for the recovery of attorney fees. On the other hand, it excludes high-ranking employees from bringing suit and includes damage caps.

Proving Conduct Is a "Motivating Factor" in Retaliatory Discharge Claims

And finally, as with claims of workers' compensation discrimination, discrimination claims under the MHRA are now subject to the "motivating factor" standard.

Thus, employees will have to prove that his or her protected status actually played a role in the adverse employment action, and that his or her protected status had a determinative influence on the adverse employment action.

These changes to the Missouri Workers' Compensation Law and the Missouri Human Rights Act represent a big last-minute victory for Missouri employers and their insurers, and they could be the start of a winning streak for Missouri employers.

For more information on how these developments may impact your business, contact:

Philip Sholtz (314.446.3375; psholtz@goldbergsegalla.com)
John M. Allen (314.446.3370; jallen@goldbergsegalla.com)
Or a member of Goldberg Segalla's Workers' Compensation and Employment and Labor Practice Groups

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