

Old Standards Die Hard: MHRA Pre-Amendment “Contributing Factor” Standard Allowed for Harassment Claim Based on Events Before *and After* MHRA Amendment

By Peter Houser on March 21, 2023
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The Missouri Human Rights Act (MHRA), which prohibits employment discrimination, was amended in 2017 to require an employee claiming employment discrimination to show that his or her protected characteristic was a “motivating factor” of the adverse actions, rather than merely a “contributing factor” as required under the previous standard. It also applied a \$500,000 damages cap to MHRA claims. This change is forward-looking and applies to claims arising after the new statute became effective on August 28, 2017. But what if a claim is brought after that amendment based on some events occurring before that date and some occurring after?

This question was addressed recently by the Missouri Court of Appeals for the Western District in *Sherice Renee Miller-Weaver v. Dieomatic Incorporated, d/b/a LMV Automotive Systems*, WD85078 (Mo. App. W.D. Dec. 13, 2022).

Case Summary

Sherice Renee Miller-Weaver, an African American woman, was hired by LMV Automated Systems in 2015 as a Human Resources coordinator and promoted to senior HR coordinator shortly after. By August 2016, she had raised several concerns in an email to management about what she perceived as racial discrimination within LMV’s work environment. She mentioned the presence of Confederate flags on employee clothing and in a truck in the parking lot, that some white employees ignored her and would not shake her hand or speak to her, and that she and other African American employees were made to work longer than and not permitted to work remotely as much as white employees. According to Weaver, none of these issues changed after her email. In September 2017, she received a “B” performance evaluation, as opposed to an “A” that she received in June 2016 (before she made her complaints). Also, in October 2017 one white employee criticized Weaver for having made a “ghetto” flyer for a Halloween event. On November 14, 2017, she was fired from LMV.

On February 8, 2018, Weaver filed a charge of discrimination with the Missouri Commission on Human Rights (MCHR) and received a right-to-sue letter. In October 2018, she filed a lawsuit against LMV alleging race discrimination and hostile work environment, among other things. At trial, over LMV’s objection, the court instructed the jury using the pre-2017 “contributing factor” standard for the racial discrimination/hostile work environment claim. The jury found in favor of Weaver on this claim, for which she was awarded \$50,000 in actual damages and \$1,000,000 in punitive damages.

LMV appealed. Among other arguments, LMV claimed that the trial court erred by not applying the new “motivating factor” standard and by not applying the new damages cap imposed by the 2017 amendment.

Appellate Court Holding

The Western District Court of Appeals first considered its previous holding in *Bram v. AT&T Mobility Services, LLC*, 564 S.W.3d 787 (Mo. App. W.D. 2018), where it determined that the MHRA amendment applies prospectively, and Missouri Supreme Court cases holding that a plaintiff’s right to recovery is governed by the statutes in effect at the time of the injury. The court therefore determined that the issue in Weaver’s case was whether her hostile work environment claim resulted in injury before or after August 28, 2017.

LMV argued that the claim did not accrue until after the statute’s effective date of August 28, 2017, because Weaver’s claim necessarily relied on events after that date to be timely filed under the continuing violation doctrine. [The continuing violation doctrine is an exception to the general rule that a charge of discrimination must be filed with MCHR within 180 days after discrimination occurs. The continuing violation exception permits a plaintiff to pursue claims based on events before that 180-day window if they are part of a “continuing violation” such as a hostile work environment (rather than a “discrete act” like termination) as long as one act forming part of the continuing violation occurred within the 180-day window.] Based on this doctrine, LMV argued that Plaintiff’s claim was timely filed *only* by its reliance on events occurring 180 days before she filed her charge of discrimination on February 8, 2018; the only such alleged events in that time frame occurred in October 2017, well after August 28, 2017. LMV reasoned that since Weaver’s claim needed to include this event to be timely, the entire claim did not accrue until after the amendment was in effect.

The Court of Appeals rejected LMV’s argument, reasoning that it conflated the issue of timely filing with the separate issue of when a plaintiff has a vested claim. Instead, the court held that the standard to be applied is determined by examining when there were a sufficient number of incidents to support a hostile work environment claim.

The court concluded that Weaver had enough evidence before August 28, 2017, to state a claim before that date. This conclusion was based on evidence that prior to that date, LMV employees wore hats and shirts bearing the Confederate flag; a truck with a Confederate flag was often seen in the parking lot; white employees refused to speak to Weaver, touch her, or even acknowledge her; she had to work harder and longer than white employees doing similar work; and she was paid less and scrutinized more. Also, Weaver was also told the company was not “big on diversity,” was not given credit for her ideas or allowed to implement them, and was given a lower performance evaluation after complaining of racism to her supervisor. (Interestingly, this evaluation actually occurred *after* August 28, 2017, but the court mentioned it in its analysis anyway).

Based on all this, the court determined that the alleged events before August 28, 2017, were sufficient to support an actionable claim for a hostile work environment. Accordingly, Weaver’s claim was vested by that date, so the pre-amendment law applied.

Takeaways

It is important to note that the court did not hold that *any* allegation that part of a hostile work environment occurred before August 28, 2017, would be enough for a plaintiff to get the benefit of the old law. For instance, one offensive comment before that date should not be enough. But neither is it a mere mathematical calculation of comparing how many events occurred before or after August 28, 2017. Rather, the determining question is whether the alleged events before August 28, 2017, considered in themselves, are significant enough that they were already actionable as a hostile work environment prior to August 28, 2017. Still, it was not difficult to state an actionable claim for hostile work environment before the 2017 amendment, so it may not take much a for a plaintiff to get the benefit of the old law.

Employers facing employment discrimination claims need to be aware of the potential exposure that still exists under the pre-2017 MHRA. If a claim contains any allegations of discrimination or harassment before August 28, 2017—even if many or most of the allegations and the plaintiff's termination or resignation itself occurred after that date—the case should still be analyzed closely for the heightened exposure that may exist if the plaintiff is allowed to use the old standard because of those allegations.

Tags: Missouri Court of Appeals, Missouri Human Rights Act