

APPELLATE CASE NOTES

JOAN M. LOCKWOOD
Gray, Ritter & Graham, P.C., St. Louis



EMPLOYEES HAVE A STATE CONSTITUTIONAL RIGHT TO A JURY TRIAL ON MHRA CLAIMS

STATE EX REL. DIEHL V. O'MALLEY

In a decision that rejected over a decade of precedent, the Missouri Supreme Court held in *State ex rel. Diehl v. O'Malley* that plaintiffs are guaranteed the right to a jury trial when suing for damages under the Missouri Human Rights Act, the state's anti-discrimination statute. The Court's unanimous en banc decision will impact Missouri employees, employers and lawyers who represent these groups.

RELEVANT FACTS

Kathleen Diehl (plaintiff in the circuit court and relator in the Missouri Supreme Court) filed a charge of discrimination against her former employer, NASD Regulation, Inc. The Missouri Commission on Human Rights issued her a "right to sue" letter, upon her request, after the charge had been pending before the Commission for more than 180 days. Diehl then filed suit in circuit court seeking actual damages for lost wages and emotional distress and punitive damages. Her petition sought damages only and not equitable relief based upon the Missouri Human Rights Act's provision prohibiting discrimination on the basis of age and gender discrimination and retaliation for filing a discrimination claim.¹ In the circuit court action, Diehl also filed a request for a jury trial, which the Jackson County trial judge denied. On appeal, the Supreme Court reversed holding that employees seeking only money damages for violations of the Missouri Human Rights Act (MHRA) have a state constitutional right to a jury trial in state court. *State ex rel. Diehl v. O'Malley*, 95 S. W.2d 82 (Mo. banc 2003).

BEFORE DIEHL

The *Diehl* case was decided on January 28, 2003. Prior to *Diehl*, the law in Missouri was that a claim of discrimination under the MHRA, Missouri's anti-discrimination statute, was tried to a judge and not to a jury.² Consequently, most plaintiffs alleging age or gender discrimination would seek a jury trial in federal court where federal anti-discrimination statutes guarantee a jury trial.³ Federal courts have permitted a jury trial based on the Seventh Amendment

to the United States Constitution where an MHRA claim is alleged in conjunction with other federal claims, such as Title VII, ADEA or the ADA. The basis for the federal court conclusion that there is a right to jury trial on claims for damages under the MHRA is that such actions are analogous to claims maintained at common law and therefore fall within the Seventh Amendment's guarantee that "the right of trial by jury be preserved".

LEGAL ANALYSIS

The *Diehl* Court began by analyzing the right to a trial by jury. Article I, Section 22(a) of the Missouri Constitution, which was enacted in 1820, provides that "the right of trial by jury as heretofore enjoyed shall remain inviolate." The Court explained that the words of this provision are meant to guarantee, not restrict a right. The phrase "remain inviolate" is more emphatic than the guarantee stated in the Seventh Amendment to the United States Constitution that "the right of trial by jury shall be preserved . . ." A historical analysis followed wherein the Court sought to determine whether Diehl's civil action for damages was the kind of case that carried a right of trial by jury in 1820. The Court noted that Missouri case law, since the State's constitution was adopted in 1820, makes clear that the right to trial by jury exists in action at law but not in equitable actions or administrative proceedings. Ordinarily, a suit that seeks only money damages is an action at law, not equity.

The Court reasoned that the MHRA, and the relief sought by Diehl (monetary damages arising out of a wrong to her person), was analogous to common law tort claims that existed in 1820 so as to provide a jury trial. The fact that the action is brought pursuant to a statute that was not in existence in 1820⁴ does not exclude the prospect of a right to a jury trial. A claim for damages under the MHRA seeks redress for a wrong done to a person. The Missouri Supreme Court concluded that a statutory claim for damages pursuant to the MHRA was no different than other statutory claims for damages such as claims for damages for wrongful death or for workers' compensation retaliation, both of which provide for

a trial by jury. The Court went on to state that the fact that a claim under the MHRA also carries an option for obtaining relief in an administrative proceeding does not change the essential nature of Diehl's claim, which was a civil action in court for damages. The Court noted that the administrative procedure under the MHRA is not an exclusive remedy or mode of recovery because once the 180 day period has passed without administrative action and the petitioner requests a right to sue letter, the commission can take no further action. The Court analogized the administrative requirement that a complaint be filed first with the human rights commission before seeking relief in court to the statutory requirement that a medical negligence plaintiff file an affidavit of merit before proceeding with a claim for damages. Accordingly, the Missouri Supreme Court overruled three appellate cases denying the right to a jury trial in actions for damages under the human rights act, specifically holding that the trial judge's order overruling Diehl's request for a jury trial denied her constitutional right to trial by jury under Article I, Sec. 22(a) of the Missouri Constitution.

CONCLUSION

The *Diehl* decision and its recognition of a right to trial by jury for an MHRA claim has a number of practical implications for employers, employees and the attorneys who represent them. First, the right to a jury trial may not apply to an MHRA claim filed in state court if a claim for equitable relief is included in the petition. Seeking reinstatement or injunctive relief might jeopardize the right to a jury trial established under *Diehl*. Second, practice in federal court and state court differs from the unanimous verdict requirement in federal court to the differences in the composition and procedural rules related to jury pools.⁵ Third, under federal law, damages are limited or capped depending on the number of individuals employed by the employer whereas there are no statutory limits or caps on the amount of monetary damages a jury can award for compensatory or punitive damages pursuant to the MHRA. Lastly, an action filed in state court can still be removed to federal court based on pendent jurisdiction (28 U.S.C. 1367) or because of diversity of citizenship jurisdiction (28 U.S.C. 1332).⁶

In dicta, the Missouri Supreme Court stated that the legislature cannot amend Chapter 213 to reverse the *Diehl* decision because the right to a jury trial was compelled by the Constitution for the State of Missouri. Nonetheless, in the wake of *Diehl*, we can expect employers' interest groups to pursue legislation that will put caps on

MHRA damages similar to those that exist under Title VII and to otherwise attempt to amend the MHRA and the current manner in which discrimination claims are brought under state law. ■

ENDNOTES:

1. While the MHRA provides for equitable relief and monetary damages, Diehl's petition sought actual and punitive damages only and did not include a request for equitable relief, such as reinstatement or injunctive relief.
2. *State ex rel. Colbert v. Sweeney*, 828 SW .2d 929 (Mo. S.D. App. 1992); *Pickett v. Emerson Electric Company*, 830 S. W .2d 459 (Mo E.D. App. 1992).
3. Title VII was amended in 1991 to allow for jury trials in federal court. Since this amendment, almost all employment litigation in Missouri has occurred in federal courts.
4. The MHRA was enacted in 1986.
5. It is also interesting to note that the Missouri Human Rights Act applies to employers with six (6) or more employees within the state whereas Federal anti-discrimination laws apply to employers with at least fifteen (15) employees.
6. In *Diehl*, the plaintiff limited her claim to \$75,000.00 and avoided federal question jurisdiction by choosing not to claim federal age, sex and retaliation claims. Note also that employers who are incorporated or have their principal place of business in Missouri, cannot remove state claims to federal court on diversity jurisdiction grounds.