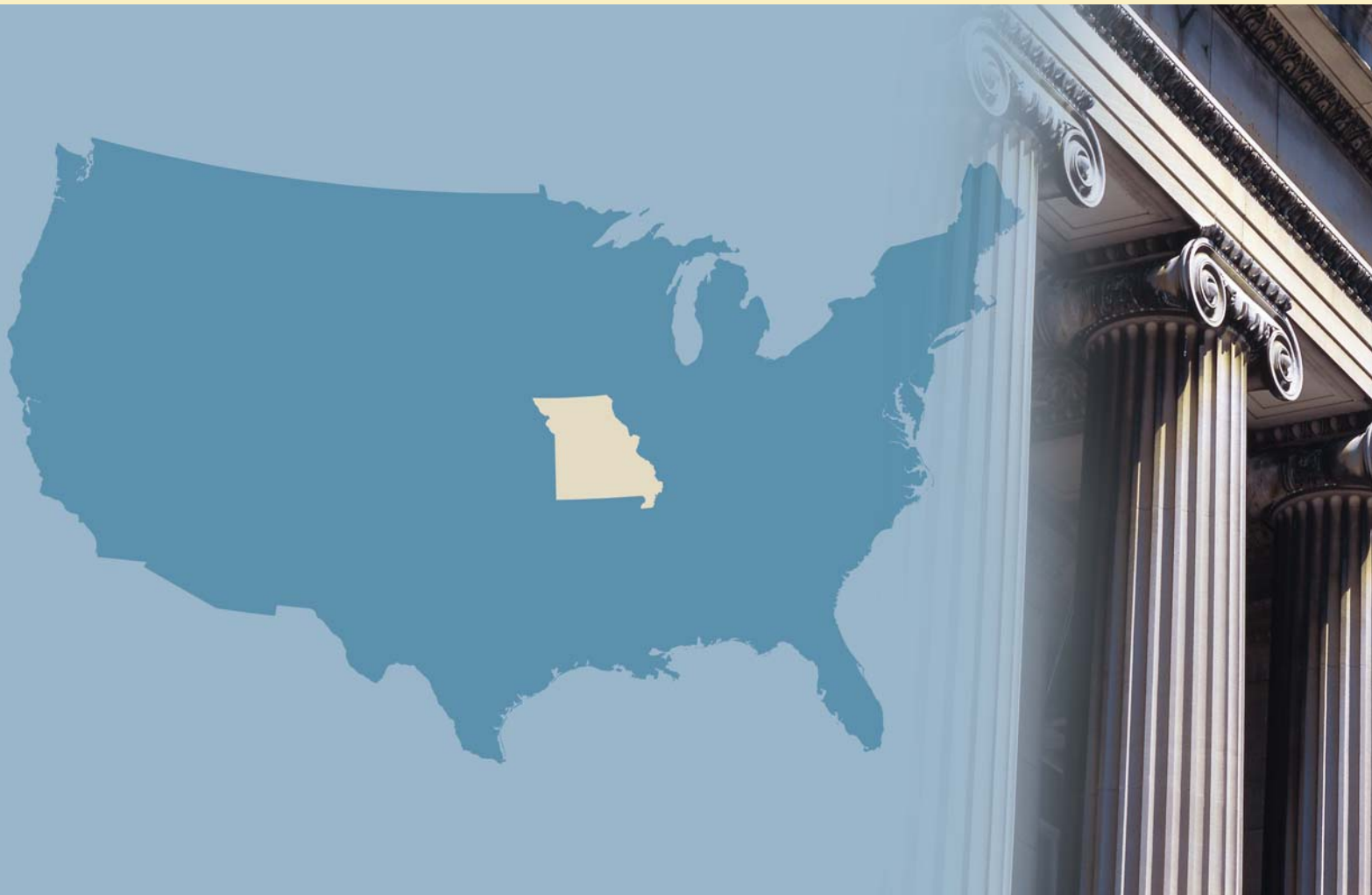


# *Labor and Employment Laws in the State of Missouri*



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*This booklet is intended to provide an overview of the most important parts of Missouri state employment laws. It is not intended to be legal advice for any specific situation or set of facts. Whenever you are dealing with any employment related situation it is always a good idea to seek the advice of competent legal counsel.*

## **I. INTRODUCTION**

The number and scope of laws regulating the employment arena has grown tremendously in the past few decades. While some areas of labor and employment law are governed exclusively by federal law, others see employers covered by supplemental (or overlapping) state laws, while a handful are exclusively state or even local concern. In general, federal law serves to establish the threshold of what an employer absolutely must do and to what employees are entitled in various situations. State law may still govern if it either establishes a higher, stricter standard for employers than federal law, or applies to a class of employers not covered under federal law. This means that where both state and federal laws apply state regulations must offer either the same or greater protections to employees than federal law.

Bear in mind that this booklet is not meant to be an exhaustive treatment of Missouri employment law in any particular area. Neither does it review applicable federal law in these areas. Rather, this booklet is intended to provide a basic reference guide to help employers quickly and successfully address common employment issues in accordance with Missouri law.

Always remember that where state and federal laws differ and an employer is covered by both, the higher, stricter standard normally must be followed. For additional information about federal employment issues you may want to review the various other booklets published by Fisher & Phillips LLP which summarize and explain the federal laws that govern employers. This booklet is no substitute for legal advice. Any questions or concerns relating to these or other employment topics should be directed to qualified legal counsel.

## **II. THE EMPLOYMENT RELATIONSHIP**

### **A. At-Will Employment**

The general rule in Missouri is that employment is at the will of either the employee or employer and can be terminated at any time by either party with or without cause.

The exceptions to the employment at-will doctrine under Missouri law are the following:

- a termination that contravenes a public policy clearly stated in the Constitution, a statute or a regulation;
  - public policy exception (refusing to commit a crime or act contrary to public policy; reporting wrongdoing or violations of law or public policy by employers or fellow employees; engaging in activities normally encouraged by public policy; filing a workers' compensation claim);
  - reporting wrongdoing to superiors or authority (i.e., "whistle-blowing");
  - performing an act supported by public policy or refusing to perform an illegal act;

- if there is a contract of employment for a specific time period or that otherwise limits the right to terminate employment;
- a statute specifically provides the employee with a remedy for the wrongful discharge (i.e., worker's compensation, jury service, voting, reporting safety violations, garnishment);
- no termination for lawful use of alcohol or tobacco products off the employer's premises during time off unless the use interferes with the employee's performance or the employer's business (Mo.Rev.Stat. § 290.145);
- the Missouri Human Rights Act, which prohibits discrimination on the basis of race, color, religion, national origin, sex, ancestry, handicap or age.

## **B. Pre-Employment Inquiries**

To ensure compliance with the Missouri Human Rights Act, discussed in Part III, during job interviews employers in Missouri may only make inquiries of applicants that are necessary to determine the applicant's qualifications and eligibility for employment (i.e., job-related inquiries). It is the employer's right to establish job-related requirements and select the best qualified applicant for a job. Pre-employment inquiries which express a limitation, specification or preference due to race, color, religion, national origin, sex, ancestry, handicap or age violate the Missouri Human Rights Act unless they are based on a bona fide occupational qualification.

### **1. Criminal Background Checks And Inquiries**

The Missouri Commission on Human Rights' guide to pre-employment inquiries prohibits inquiry into arrest records. Further, an employer should not take action based on actual convictions unless substantially related to an applicant's ability to perform a specific job. There are various exceptions to this general rule as discussed below. Missouri law prohibits disqualification or discharge solely on the basis of a felony conviction even in certain regulated areas such as activities for which a license is required in order to participate, like the liquor business. Mo.Rev.Stat. § 561.016. This statute was intend to remove much of the stigma of conviction and to increase the legitimate discretion of licensing boards by eliminating arbitrary or inflexible barriers imposed by criminal conviction.

#### **a. Teachers, Mo.Rev.Stat. § 168.071, 168.133**

Missouri law requires a school district to conduct a criminal background check on any person employed after January 1, 2005, who is authorized to have contact with a pupil. This includes, but is not limited to, persons such as teachers, administrators, aides, paraprofessionals, assistants, secretaries, custodians, cooks and nurses. Missouri law also requires the state Board of Education to impose sanctions or deny public or private teachers a teaching certificate if they were convicted of certain crimes. If a teacher or an applicant for a teaching certificate has been found guilty of a crime that involves poor morality (i.e., murder, sexual offenses, or serious drug offenses) then the Board of Education may revoke or refuse to issue a teaching certificate.

**b. School Bus Drivers, Mo.Rev.Stat.§§ 168.133, 302.272.5**

Missouri law requires a school district to conduct a criminal background check for school bus drivers including those employed by a pupil transportation company under contract with the district. The district may allow drivers to operate buses pending the result of the background check. The director of revenue shall not issue or renew a school bus endorsement to any applicant who has pled guilty or been found guilty of various felony or misdemeanor offenses (including drug offenses, child abuse, and sexual offenses); who is listed on the child abuse and neglect registry; or whose driving record demonstrates the applicant's license has been suspended, revoked or disqualified or whose driving record shows a history of moving vehicle violations.

**c. Mental Health Workers, Mo.Rev.Stat. § 630.170**

State law prohibits individuals convicted of certain offenses (i.e., mistreatment of patients, serving poor food or sexual offenses) from working in a state licensed mental health facility where people are either voluntarily or involuntarily detained.

**d. Health Care Employees, Mo.Rev.Stat. §§ 660.315, 660.317**

Health care providers and employers must obtain, from the highway patrol or a private investigatory agency, a criminal background check within two days of hiring. The employer must then determine if the employee is on the employee disqualification list provided by the State Department of Social Services. The employer's obligations do not end there, because they must also conduct due diligence in hiring employees for the health care field. Due diligence in this context means the health care employer must make all reasonable inquiries to ensure that potential employees have not committed crimes.

Health care providers and employers are prohibited from hiring persons who have committed a felony against another person (i.e., murder, rape) or are on the employee disqualification list. A provider which violates this law will be subject to a misdemeanor offense.

**e. Family Care Safety Act, Mo.Rev.Stat. §§ 210.903, 210.906**

The family care safety registry contains background information on child-care workers, elder-care workers, personal-care workers and mental-care worker as well as providers of child-care, elder-care, personal-care, and mental-care. Every child-care, elder-care, personal-care, and mental-care worker must complete a registration form and submit it to the Department of Health within 15 days of the beginning of their employment. This registration form includes a signed consent for a criminal background check. Any person employed in this capacity who without good cause fails to submit a completed registration is guilty of a class B misdemeanor.

**2. Credit Records**

An employer should not inquire into an applicant's credit records unless they are job related. This includes information about credit rating, charge accounts, and bankruptcy. The Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* ("FCRA"), includes specific provisions

governing “consumer reports” used or collected in whole or in part to evaluate an individual’s eligibility for employment, promotion, reassignment, or retention as an employee. A “consumer report” obtained for these “employment purposes” includes information obtained from public records. A discussion regarding the implications and complexities associated with the FCRA is beyond the scope of this booklet. Please consult an attorney at Fisher & Phillip LLP or other competent labor and employment counsel for legal advice concerning the FCRA.

### **3. Genetic Information, Mo.Rev.Stat. § 375.1306**

Genetic information (DNA and RNA) is prohibited from use in the employment decision making process. Genetic information, like DNA and RNA, is sometimes used to determine if people are predisposed to certain diseases and illnesses; however, Missouri law does not allow this information to be used for employment purposes. The only way to obtain genetic information from an employee is to receive their written consent. Genetic information may be used by an employer if the use is directly related to a person’s ability to perform assigned job duties. Genetic tests do not include information about family history, results of routine physical measurements or examinations, including blood or urine analysis, cholesterol tests, tests for HIV, drug tests, or other tests commonly accepted in the medical field.

### **4. Physical Examinations, Mo. Code Regs. tit. 8, § 60-3.060(2)**

The Missouri Commission on Human Rights has adopted regulations which prohibit an employer from making pre-employment inquires of an applicant regarding physical or mental impairments. An employer may ask whether an applicant is able to perform specific job related functions. Missouri regulations permit pre-employment physical examinations to determine the applicant’s ability to meet minimum physical standards when:

- the examination is given to all applicants regardless of physical or mental impairment;
- the minimum standards are related to the ability to perform the essential functions of employment; and
- the results of the examination are given the same consideration in employment decisions for all applicants regardless of the impairment.

### **5. Employment Testing, Mo. Code Regs. tit. 8 § 60-3.030**

Employment tests that are used for determining an employee’s skills, ability and education for a particular job must not adversely affect classes protected by the Missouri Fair Employment Practices Act. Each employer who uses such tests must have available evidence that the tests are not being used in a manner that adversely affects members of a protected class. Higher rejection rates for minorities than non-minorities presents evidence that the test may adversely affect those in protected classes. However, a test can still be valid if the content of the test demonstrates the essential knowledge or skills and behaviors needed for the job in question.

## **6. Drug And Alcohol Testing**

There is no state statute governing drug and alcohol testing for private employers in general. Employers may institute drug and alcohol testing policies provided that the employee is aware that they will be subject to testing (i.e., through posting the policy in the workplace, including the policy in a written handbook or the union contract). Testing may include pre-employment drug screens; random drug testing; testing upon “reasonable suspicion” of impairment while on the job; routine testing following an industrial accident; and follow-up testing to ensure compliance once an employee has tested positive for drugs. An employee who is at work with a detectable amount of drugs or alcohol in violation of an employer’s policy and terminated for this reason is considered to have committed misconduct in connection with work for purposes of a claim for unemployment benefits – no evidence of work performance impairment is necessary. Mo.Rev.Stat. § 288.045.

There are specific laws which apply to school bus drivers. Anyone employing a school bus driver has ten days to inform the Director of the Department of Revenue of a failed drug, alcohol or chemical test. Once the Director determines that the test was failed, the school bus permit of the bus driver is suspended for a period of one year. Mo.Rev.Stat. § § 302.275, 302.276.

The lawful use of alcohol or tobacco away from the workplace is protected from adverse employment action. Mo.Rev.Stat. § 290.145. That is, an employer cannot discharge, refuse to hire, or otherwise discriminate against any individual who uses lawful alcohol or tobacco products off the employer’s premises during time off unless the use interferes with the employee’s performance or the employer’s business. Religious organizations and not-for-profit healthcare organizations are exempt from this provision.

### **C. Labor Organizations, Mo. Const. Art. 1, §29**

The Missouri constitution grants employees the right to form, join, and assist labor unions in order to bargain collectively to improve working conditions and increase wages. Thus, employers cannot coerce or restrain employees selecting representatives in collective bargaining agreements or other union matters. Also, while Missouri has an anti-trust statute prohibiting monopolies, lawful labor unions are exempt from this statute. (Mo.Rev.Stat. § 416.041).

### **D. Missouri Omnibus Immigration Act**

The Missouri Omnibus Immigration Act (MOIA) requires all employers in Missouri to participate in the federal Basic Pilot Program through which employers can verify the U.S. Citizenship of every employee and applicant. Employers who hire illegal aliens have the opportunity to remedy the illegal hiring or face mandatory suspension of the employer’s state and local business licenses. The MOIA also makes it illegal for employers to deduct as business expenses any wages paid to an illegal alien. The MOIA also requires all state-operated universities or colleges to reject the applications of persons in this country illegally.

State agencies are required to audit all of the contractors doing business within Missouri to ensure the contractor's employees are legally eligible to work in the U.S. If the state determines that a current contractor employs any persons who are not eligible to work in the U.S. in violation of federal law, the state may lawfully terminate the contract and suspend or debar the contractor from doing business with the State of Missouri.

#### **E. Employment Of Minors, Mo.Rev.Stat. §§ 294.005 To 294.150**

Missouri law generally prohibits the employment of minors under the age of 14. Minors between 14 and 16 years of age may be employed outside school hours and when school is not in session so long as the employment does not involve hazardous work.

##### **1. Working Conditions**

Minors between the ages of 14 and 16 may work at non-hazardous occupations subject to the following:

- work certificates are required for the employment of any minor under 16 during a regular school term. (The employer must keep the work certificate on file while employing the minor and no certificate is needed when school is not in session);
- a minor may work no more than three hours per day in any school day;
- a minor may work no more than eight hours in any non-school day;
- a minor may work no more than six days or 40 hours in any week.

From Labor Day until June 1, normal work hours for a minor are not to begin before 7:00 a.m. and must end by 7:00 p.m. For the time period June 1 through Labor Day, a minor may work until 9:00 p.m. There is a regional fair exception permitting children age 14 and 15 to work until 10:30 p.m. at a regional fair under certain circumstances. (Mo.Rev.Stat. § 294.030).

The only meal/break provision relates to minors employed in the entertainment industry. (Mo.Rev.Stat. § 294.022).

\* Note, special rules apply to minors employed in the Entertainment Industry. (Mo.Rev.Stat. § 294.022)

##### **2. Prohibited Hazardous Occupations**

A child under 16 cannot be employed or permitted to work in any of the following occupations identified as hazardous:

- any power driven machinery, except lawn and garden machinery used in domestic service at or around a private residence when there is an agreement between the occupant and the child for the performance of the work;
- the oiling, cleaning, maintenance or washing of machinery;

- any mine or quarry except in offices or at other non-hazardous employment;
- stone cutting or polishing except those found in jewelry type businesses;
- any plant manufacturing, processing, storing, or transporting Type A and B explosives, ammunition, or like materials, or in an establishment in which sales of Type A and B explosive materials make up fifty percent or more of gross sales;
- the operation of any motor vehicle;
- any blast furnace, rolling mill, foundry, forging shop, or in any establishment where heating of metals is carried on or where cold rolling, stamping, shearing, punching, of metal stock is carried on;
- saw mills, cooperage stock mills, or where woodworking machinery is used;
- the operation of freight elevators, hoisting machines or cranes, or on or about any manlifts;
- occupations involving exposure to ionizing or non-ionizing radiation or any radioactive substance;
- any occupation involving exposure to any toxic or hazardous chemicals;
- any capacity in or about a motel, resort, hotel, where sleeping accommodations are furnished except in offices or locations physically separated from the sleeping accommodations;
- any place or establishment in which intoxicating alcoholic liquors or beverages are manufactured, bottled, stored or sold for consumption on or off the premises, except in establishments where at least fifty percent of the gross sales consist of goods, merchandise, or commodities other than alcoholic beverages;
- any other occupation or place of employment dangerous to the life, limb, health or morals of children under the age of sixteen;
- any street occupation connected with peddling, begging, door-to-door selling or any activity pursued on any public street or public place (This excludes any public school or church or charitable fund-raising activity, or distribution of literature relating to a registered political candidate).

### **3. Occupations Not Covered**

Missouri Child Labor Laws permit minors over the age of 12 to work in the following occupations:

- work performed by a child for a parent, legal custodian, or guardian;
- occasional yard or farm work performed with the knowledge and consent of the

- child's parent, legal custodian, or guardian;
- the sale or delivery of newspapers;
- child care;
- participation as a player, referee, or coach in a youth sporting event.

#### **4. Recordkeeping Obligations**

Any employer who employs a minor shall make and keep for a period of not less than two years, on the premises where the child is employed, the work certificate, a record of the name, address, and age of the child, and times and hours worked by the child each day. In addition, a list of all children who are employed and under the age of 16 must be posted in a conspicuous place in the business. Mo.Rev. Stat. 294.060.

#### **5. Penalties**

An employer violating the Child Labor Laws is guilty of a class C misdemeanor and shall be civilly liable for damages of not less than \$50.00 but not more than \$1,000.00 for each violation. Each day a violation continues is a separate violation.

#### **F. Non-Compete Agreements**

Missouri law allows non-compete agreements which can be applicable to all businesses in the private sector, so long as the agreement is there to protect "legally permissible business interests." An enforceable non-compete agreement must be, or be a part of, an otherwise valid and enforceable contract. The remedies for violating a non-compete include monetary damages, an injunction to enforce the employee's compliance, or both.

The non-compete must be supported by consideration. Generally, the employer's promise to hire the employee and pay a salary is sufficient consideration for the employee's covenant not to compete. Continuing to provide employment can also be sufficient consideration; therefore, a non-compete can be valid even if entered into after the employee is hired. The non-compete must also be entered into as the result of proper bargaining – it cannot be obtained through fraud or duress.

A critical requirement for an enforceable non-compete agreement is that the restrictions must be reasonable as to the time and geographic area. A reasonable restraint has been defined as a restraint not greater than fairly required for the protection of the employer. Each case is governed by its own particular set of facts. For instance, Missouri courts have upheld worldwide restrictions as reasonable where the employer and its competitors did business on a worldwide basis. In other cases, courts have upheld covenants which do not contain any geographic limit, but apply only to the former employee's customers. Missouri courts have upheld covenants in a variety of circumstances involving different combinations of time and area restrictions.

Finally, the non-compete agreement must relate to a protectible interest of the employer. These include customer contacts, accounts and goodwill, and trade secrets or other commercially

sensitive, confidential information pertaining to the employer's business practices. Information which is publicly available or of general knowledge in an industry is *not* considered trade secret.

#### **G. Service Letters, Mo.Rev.Stat. § 290.140**

Missouri law requires that a corporate employer provide a service letter if an employee makes a proper request. This law applies to corporations doing business in Missouri which employ at least seven or more employees and to individuals who worked for an employer for at least 90 days before being discharged or having voluntarily resigned. The employer must provide the service letter in response to a written request from a former employee that is sent by certified mail to the superintendent, manager or registered agent of the corporation, with specific reference to the statute within one year following the date of discharge or voluntary quit.

Once the employee complies with these statutory requirements, the employer has forty-five days to provide a letter stating the nature and character of the employee's service at the company; the duration of employment, and a truthful statement of the reason(s) for the employee's discharge or voluntary resignation. Missouri's service letter law is administered and enforced, through the courts, by the Missouri Department of Labor and Industrial Relations. An employer that violates this statute is liable for compensatory, but not punitive damages. In the event the employer fails to issue a service letter, the employer may be liable for nominal and punitive damages. Punitive damages are not based on the content of the letter.

#### **H. Inquiries From Prospective Employers, Mo.Rev.Stat. § 290.152**

Employers in Missouri generally limit the information that is provided to prospective employers about current or former employees, even though there is a Missouri law that provides qualified immunity from civil liability if the employer provides, in response to a written request from a prospective employer, a written response that provides information pertaining to the nature, character and duration of the service rendered by the current or former employee and the cause, if any, such employee was discharged or voluntarily quit. The response also should be sent to the current or former employee.

The employee may request a copy of the letter for up to one year. The problem for employers under the statute is that the immunity is lost if the employee can show that the employer's disclosure was false and made with knowledge that it was false or with reckless disregard for whether such disclosure was true or false. Employers violating this provision will be liable for compensatory, but not punitive damages. Thus, Missouri employers typically limit responses to dates of employment and position held.

Generally, disclosures of worker's compensation records are prohibited to any person other than those parties to a hearing on a claim. *See* Mo.Rev.Stat. § 287.380. Therefore, employers may not disclose worker's compensation records of a previous employee to prospective employers.

### **III. WAGES AND HOURS**

#### **A. Recordkeeping, Mo.Rev.Stat. § 290.520**

Employers must make and retain for a period of three years a record of the name, address, and occupation of each employee, the rate of pay, the amount paid each pay period to each employee, the hours worked each day each workweek by the employee, and any goods or services provided by the employer to the employee. The records must be made available for inspection by appointment.

#### **B. Wage Payment**

##### **1. Minimum Wage, Mo.Rev.Stat. §§ 290.500 To 290.507**

The minimum wage as of January 10, 2010, in Missouri is \$7.25 per hour and only applies to employees not covered by the Fair Labor Standards Act. (The Missouri minimum wage automatically increases/decreases every January 1 based on the change in the cost of living.) Tips and gratuities may be credited for up to 50% of the minimum wage. The base wage for tipped employees is now \$3.13 per hour. Also, the fair market value of meals and lodging, transportation to and from work, and merchandise furnished at company stores may be credited to the minimum wage amount.

Employers subject to the minimum wage requirements must also keep a poster of the requirements in a place that is accessible to all employees like a break room. Employers that violate any part of the minimum wage law will be subject to a misdemeanor.

##### **2. Payment Of Wages, Mo.Rev.Stat. §§ 290.080, 290.110**

All corporations and manufacturers doing business in Missouri must pay their employees at least as often as semi-monthly. At the option of the employer, executive, administrative, professional, sales, and other employees compensated in whole or in part on a commission basis may be paid their salaries or commissions on a monthly basis. At least once a month, employers must provide each employee with an itemized pay statement showing the total amount of deductions for the period.

##### **3. Underpayment Of Wages, Mo.Rev.Stat. § 290.527**

Any employer who pays any employee less wages than the wages the employee is entitled to is liable to the employee for the full amount of the wage rate, plus an additional equal amount as liquidated damages, less any amount actually paid to the employee by the employer and for costs and reasonable attorney's fees. Any agreement between the employee and employer to work for less than the wage rate is no defense. An employee has two years within which to bring an action for a deficiency in wages.

#### **4. Proper Wage Deductions, Mo. Code Regs. tit. 8 § 30-4.050**

An employer may deduct the fair market value of meals, lodging, and other goods and services as a credit toward the payment of the minimum wage to an employee provided that they are voluntarily received by the employee and for the private benefit of the employee. The following is an illustrative list of items that are not for the private benefit of the employee and may not be used as a credit toward the payment of the minimum wage to an employee:

- tools and equipment;
- uniforms worn by the employee as a condition of employment;
- laundry or cleaning of uniforms;
- maintenance of tools, equipment or uniforms;
- breakage or loss of tools, equipment or uniforms;
- any other items required by the employer to be worn or used by the employee as a condition of employment; and
- transportation furnished to the employee as an incident of and necessary to the employment (i.e., travel costs of railroad maintenance-of-way workers).

#### **5. Wage Discrimination Based On Sex Prohibited, Mo.Rev.Stat. § 290.410**

No employer shall pay a female at a wage rate less than the wage rate paid to male employees in the same establishment for the same quantity and quality of the same classification of work. Rates of pay may vary if based on a “difference in seniority, length of service, ability, skill, difference in duties or services performed, difference in the shift or time of day worked, hours of work, or restrictions or prohibitions on lifting or moving objects in excess of specified weight, or other reasonable differentiation, or factors other than sex, when exercised in good faith.”

#### **6. Wage Claim Retaliation, Mo.Rev.Stat. § 290.525(7)**

An employer who discharges or discriminates against an employee who has notified the Department of Labor that he or she has not been paid in accordance with state minimum wage requirements is guilty of a misdemeanor.

#### **7. Wage Reduction Notice, Mo.Rev.Stat. § 290.100**

An employer must give 30 days’ notice if it is going to reduce employees’ wages. The notice may be mailed to the employees or posted in a conspicuous place in or about the places the employees work.

## **8. Wage Deductions**

### **a. Garnishment, Mo.Rev.Stat. §§ 525.010, et. seq., and 452.350**

Missouri law provides a greater limitation on wage garnishment than is prescribed under the Consumer Credit Protection Act. Missouri employers are subject to withhold wages from employees within two weeks of being issued support orders and are liable to remit the withheld wages within seven days. Further, an employer must notify a court within 10 days of an employee's termination or voluntary separation if that employee was subject to a support order. Income that is subject to withholding for garnishment purposes includes any periodic wages, salaries, benefits, commissions, or bonuses.

For the head of a household, 90% of disposable weekly earnings or 30 times the federal minimum wage per hour (i.e.  $\$6.50 \times 30 = \$195.00$ ), whichever is greater, will be *exempt* from garnishment. For all others, the exemption is the same as the federal exemption.

Child support has priority over all other legal obligations. If an employee has multiple support orders and the total withholding exceeds the limits laid out above then the employer will distribute the amount in the garnishment pool in percentage fashion to the total amount owed under the support orders, giving priority to child support. For example, if an employee is the head of a household and has \$1,000 of disposable weekly earnings with three support orders; one which is child support of \$50 per week, one which is a credit card order of \$5,000, and one which is a car loan default of \$10,000, then this provision will apply. Since \$900 (90% X \$1000) is exempt, the employee will have \$100 in the garnishment pool. First, the employer must satisfy all of the child support amounts of \$50. This leaves \$50 to divide between the other orders. The credit card order will receive \$16.67 per week ( $\$5,000 / \$15,000 \times \$50$ ) and the car loan order will receive \$33.33 per week ( $\$10,000 / \$15,000 \times \$50$ ).

The Uniform Interstate Family Support Act (UIFSA) also applies to Missouri employers. This enables an income-withholding order issued in another state to be sent directly to a Missouri employer without first filing a petition or registering the order with a Missouri court. Upon receipt of an out-of-state order, an employer must immediately provide a copy to the employee owing support, treat the order as if it had been issued by a Missouri court and withhold and distribute the funds as directed in the withholding order.

Employers are allowed to take an administrative fee of \$6 per month for each child support order and \$8 per month for all other orders.

### **b. Assignment Of Wages, Mo.Rev.Stat. §§ 432.030, 452.350, And 454.505**

An employee may assign his/her wages to another person provided that the assignment is done in writing, dated correctly, states the amount assigned and includes the name of the party to whom the wages are to be assigned. Missouri law prohibits the assignment of wages, salaries, and earnings not earned at the time of the assignment. Section 452.350 provides an exception to the assignment of future wages upon court order for the purpose of enforcing an order for support or maintenance. To protect against claims for improper withholding or failure to withhold wages, an employer should be aware of sections 452.350 and 454.505. Both statutory

provisions prohibit employers from discharging or otherwise adversely affecting the employment of an individual because of the fact that the employer received a notice of wage assignment for that individual.

Under Section 452.350, an employer who fails without good cause to honor an assignment of wages may be held liable for the amount assigned. The employer served with an income assignment also has an affirmative duty to notify the court in writing if the obligor's (employee's) employment is terminated.

Similarly, under Section 454.440, an employer who fails to withhold and pay over child support payments can be responsible for the amounts that should have been withheld and paid. Further, an employer who fails to provide statutorily proscribed wage information to the Division of Child Support Enforcement, Missouri Department of Social Services, can face a \$100 per day penalty for each day over sixty that the requested information is not furnished.

#### **9. Wage Payment On Termination, Mo.Rev.Stat. § 290.110**

For employees discharged by an employer conducting business in Missouri, all unpaid wages become due and payable on the date of discharge with a penalty applicable if the employer fails to make payment within seven days of a written request from the employee. If an employer does not pay the employee within seven days of the written request, then wages will continue to accrue until the employee is paid, but no longer than 60 days. If at the time of termination an employee has accrued vacation time, the employer will not be required to pay the accrued vacation pay unless the employer contractually agreed to or has a policy or practice of paying accrued vacation. Recent case law indicates that in the absence of a contractual agreement for the payment of accrued vacation upon termination, vacation pay does not constitute wages for purposes of the penalty imposed when an employer fails to pay unpaid wages at the time of termination.

#### **10. Unemployment Compensation, Mo.Rev.Stat. § 288.032**

An employer under Missouri's unemployment compensation laws is one who pays more than \$1,500 in wages in a calendar quarter. Missouri employees are entitled to claim unemployment benefits upon termination of employment, provided they were not terminated for misconduct connected with their work or voluntarily resigned without good cause attributable to their work. Employers must post notice of this right in a place that can be seen by all employees.

##### **a. Shared Work Unemployment Compensation Program, Mo.Rev.Stat. § 288.500**

This program is available for employers experiencing tough financial times to avoid layoffs and assist employees in retaining their jobs. The employer must divide available work among a group of employees. To participate in the program an employer must reduce an affected employee's hours by at least 20% and not more than 40% and the affected unit must have at least three employees. To receive shared work benefits, workers must qualify for regular unemployment benefits and the employer must have their shared work plan approved by the Division. The benefits an employee receives are equal to the amount their wage hours were cut.

## C. Work Hours

### 1. Overtime Payment And Hours, Mo.Rev.Stat. §§ 290.500 To 290.507

For employees not covered by federal overtime law, most employers in Missouri must pay their non-exempt employees overtime equal to time-and-one-half of their regular pay for hours worked in excess of 40 per week. Employees exempt from the standard overtime laws include persons employed in agriculture, executive, administrative, professional occupations, salespersons paid mainly by commissions, and individuals employed by retail or service businesses with gross volume business of over \$500,000. An exception to the 40 hour rule is that employees for any amusement or recreation business are to be paid overtime wages for hours worked in excess of 52 per week.

Every employer must have a wage regulations poster conspicuously placed and accessible to all employees. Any employer that underpays its employees under the overtime law is liable to the employee for the amount not paid, plus an equal amount as liquidated damages, plus reasonable attorney's fees the employee had to incur.

### 2. Holidays

There are 12 legally recognized bank and school holidays in Missouri, including all 10 federal holidays. When a holiday falls on a Sunday it is officially observed the following Monday; no law specifies when or if to observe holidays falling on Saturday. The legally recognized holidays are as follows:

New Year's Day*	January 1
Martin Luther King's Birthday*	3rd Monday in January
Lincoln's Birthday	February 12
Washington's Birthday/Presidents Day*	3rd Monday in February
Truman Day	May 8
Memorial Day*	Final Monday in May
Independence Day*	July 4
Labor Day*	1st Monday in September
Columbus Day*	2nd Monday in October
Veterans' Day*	November 11
Thanksgiving Day*	4th Thursday in November
Christmas Day*	December 25

\*Federal holidays

Neither state nor federal law requires private sector employers to recognize holidays, either as paid or unpaid time off from work. Furthermore, employers may determine the class of employees (e.g., full-time, part-time or temporary) who are eligible for a paid holiday policy and those who are not.

#### **IV. EMPLOYMENT DISCRIMINATION, THE MISSOURI HUMAN RIGHTS ACT, MO.REV.STAT. § 213.010, ET SEQ.**

##### **A. Generally**

The Missouri Human Rights Act (MHRA) covers the employment practices of employers, public and private, which employ six or more persons within the state. The MHRA does not apply to corporations and associations owned and operated by religious or sectarian groups. The MHRA makes it unlawful for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of the individual's race, color, religion, national origin, sex, ancestry, age or disability. Some cities also have local ordinances that outlaw discrimination based on sexual preference. These are considered "protected categories."

It is also unlawful for an employer to limit, segregate, or classify its employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of a protected category. These actions are also unlawful for a labor organization.

The MHRA also makes it unlawful for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of a protected category in the individual's admission to, or employment in, any program established to provide apprenticeship or other training.

The MHRA also makes it unlawful for any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification, or discrimination, because of a protected category unless based on a bona fide occupational qualification or for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of a protected category or to classify or refer for employment any individual on the basis of a protected category.

It is not unlawful for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided the differences or systems are not the result of an intention to discriminate and are not used to discriminate. Likewise, an employer may administer and rely upon the results of any professionally developed ability test so long as its administration or actions upon the results is not designed, intended or used to discriminate because of a protected category.

The MHRA does not require an employer to give preferential treatment to any individual because of a protected category because an imbalance may exist with respect to the total number or percentage of persons of any particular race, color, religion, national origin, sex, ancestry, age or disability employed by any employer compared to the total number or percentage of such

persons of such protected category in any community, state, section or other area, or in the available workforce in those areas.

## **B. Remedies**

To bring a complaint of illegal discrimination under the MHRA, the aggrieved person must file with the Missouri Commission on Human Rights a verified complaint in writing, within one hundred eighty days of the alleged discriminatory act. [Note that an employee has 300 days to file a federal charge of discrimination with the EEOC.]

The Missouri Commission on Human Rights is the regulatory agency in Missouri that deals with employment discrimination claims. (Mo.Rev.Stat. § 213.030(1)). The Commission sets out rules and regulations on how to carry out the Missouri anti-discrimination laws. The Commission also investigates employment discrimination claims and issues right-to-sue letters that allow claims of employment discrimination to be filed in court if the employee brings suit within 90 days after receiving the letter.

It is unlawful for an employer to retaliate or discriminate in any way against any person because the person opposed a practice prohibited by the MHRA or because such person filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding or hearing. Likewise, it is unlawful for an employer to discriminate against a person based on that person's association with a person protected by the MHRA.

The MHRA, like Title VII, provides many potential remedies to claimants, including reinstatement, back pay and front pay. For intentional violations, compensatory and punitive damages are available. While Title VII caps compensatory and punitive damages, the MHRA has no cap on damages. A separate Missouri statute, however, does limit punitive damages to the greater of \$500,000 or five times the amount of the judgment (without punitive damages).

## **C. General Rules For Employers**

### **1. Anti-Discrimination Posters, Mo. Code Regs. tit. 8 § 60-3.010(1)**

In Missouri, every employer is required to post the Commission's equal employment poster in a conspicuous place where employees will have access to it such as in the break room or in a place where other employee notices are posted.

### **2. Recordkeeping, Mo. Code Regs. tit. 8 §60-3.010(4)-(6)**

An employer must maintain personnel or employment records including, but not limited to, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation and selection for training or apprenticeship for a period of at least one year from the latter of the date of the making of the record or the personnel action taken.

Once a complaint of discrimination is filed and the employer is notified, the employer must preserve all personnel records relevant to the complaint until the final disposition of the

complaint (i.e., once all litigation is terminated). Personnel records in this context include personnel or employment records relating to the complainant as well as other similarly situated employees. For example, if the complainant alleged discriminatory failure to hire, the employer is obligated to preserve records relating to the application and hiring process for that position including the application forms or test papers completed by the unsuccessful applicant and by all other candidates who applied for the same position and were rejected.

## **D. Prohibited Discrimination**

### **1. Sex Discrimination, Mo. Code Regs. tit. 8 § 60-3.040**

Generally, employers must treat male and female employees and applicants equally unless sex is a bona fide occupational qualification. The bona fide occupational qualification for men and women is strictly construed and there are not very many opportunities for an employer to lawfully hire males or females only. For example, the lifting of heavy weights is not considered a bona fide occupational qualification for the purposes of only being able to hire men. Also, an employer may not refuse to hire a particular male or female because of stereotypes of the applicant's gender. For example, the failure to hire a male for a secretarial position because the stereotype that women hold secretarial positions is prohibited.

Pre-employment inquiries are allowed to ask the gender of the applicant provided the inquiry is made in good faith and for a nondiscriminatory purpose. Also, an employer must not make any distinction between terms and conditions of employment based upon sex. For example, the employer's wage schedules must not bear any relation to sex. Employers are also prohibited from discriminating based on sex with regards to fringe benefits (e.g. medical, accident, life insurance and retirement, profit sharing, and bonus plans). Employers are also prohibited from making any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex.

The MHRA also prohibits discrimination against a person because of pregnancy on the basis that such conduct amounts to sex discrimination. An employer is to treat pregnancy in the same manner as any other temporary disability. An employer is allowed to make distinctions and provide additional benefits for women who are pregnant. Absent a business necessity, an employer cannot exclude applicants or employees from employment because of pregnancy.

### **2. Race Discrimination**

The MHRA prohibits race discrimination or discrimination based on an individual's color. However, the MHRA does not require employers to give preferential treatment based on race or color. Discrimination includes any unfair treatment such as unlawful harassment (discussed below) and specific adverse employment actions. Regarding employment actions in question, the complainant carries the burden to prove that his or her race or color was the "contributing factor" at the time of the employment decision.

### **3. Harassment**

Harassment on the basis of sex also violates the MHRA. This includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual; or
- such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

In determining whether alleged conduct amounts to sexual harassment, the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred, is reviewed on a case-by-case basis.

An employer is liable for sexual harassment by its agents, employees and supervisory employees if it knew or should have known of the alleged harassment regardless of whether the specific acts complained of were authorized or forbidden by the employer. An employer is vicariously liable to an employee with respect to sexual harassment by a supervisor with immediate or successively higher authority over the employee or other supervisor who the employee reasonably believes has the ability to significantly influence employment decisions affecting him/her even if the harassment is outside the employee's chain of command – a definition which expands federal law.

When no tangible employment action is taken, an employer can defend itself by demonstrating that it exercised reasonable care to prevent and promptly correct any sexually harassing behavior and that the employee unreasonably failed to take advantage of the preventative or corrective opportunities provided by the employer or to avoid harm otherwise. For instance, an employer with an Equal Employment Opportunity Policy which prohibits sexual harassment and which contains an appropriate complaint procedure, could raise this affirmative defense in the event the victimized employee fails to report the alleged harassment. This defense is not available if the harassment culminates in a tangible employment action. A tangible employment action is a significant change in employment status and usually inflicts direct economic harm. Examples include: hiring and firing; promotion or failure to promote; demotion; undesirable reassignment; a decision causing a significant change in benefits; compensation decisions; and work assignments.

Harassment based on one's race is also actionable under the MHRA. The same standards generally apply in evaluating a hostile work environment claim based on race as with a sexual harassment claim.

#### **4. National Origin Discrimination, Mo. Code Regs. tit. 8 § 60-3.070**

An employer may not discriminate against potential applicants based upon their national origin or ancestry (i.e., where the employee came from, not the employee's citizenship). Examples of unlawful actions include: testing an applicant in English when the employer knows that the applicant's first language is not English and English is not an essential job qualification; denying equal opportunity to persons married to or associated with persons of a specific national origin, i) because of membership in lawful organizations identified with or seeking to promote the interests of national groups, ii) because of attendance at schools or churches commonly utilized by persons of a given national origin or iii) because their name or that of their spouse signifies they are from a specific nation of origin.

#### **5. Disability (Physical And Mental) Discrimination, Mo. Code Regs. tit. 8 § 60-3.050**

Generally, employers may not discriminate in employment decisions based upon applicants or employees whose disability is unrelated to the job. The Missouri regulations define a disabled person as one with either a physical or mental impairment which substantially limits one or more of that person's major life activities; or has a record of such impairment; or is regarded as having such an impairment.

A disability is job related if placing the disabled person in a position would pose a threat of harm to the health and safety of others. A disability is *not* job related because of the uninsurability or increased cost of insurance for the employee; merely because the job may pose a threat of harm to the employee or applicant with the disability unless the threat is one of demonstrable serious harm to his/her safety; or if, with reasonable accommodation, it does not prevent performance of the essential functions of the job in question.

The MHRA, like the Americans with Disabilities Act, requires a "reasonable accommodation" as to any known or perceived limitations when the person is otherwise qualified for the job. Reasonable accommodations include making facilities, like bathrooms, readily accessible to the handicapped person; job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, and the provision of readers or interpreters. An employer should make a good faith attempt to accommodate handicapped employees provided the accommodations do not cause an undue hardship to the employer.

An employer may not inquire into an applicant's mental or physical impairments in a pre-employment inquiry. However, an employer may ask an applicant about his/her ability to perform specific job-related functions. For example, an employer would be allowed to ask an applicant to perform a math problem if that is essential to the job in question even though the answer to the problem could uncover potential mental handicaps that the applicant may have.

Also, an employer may conduct pre-employment medical exams relating to the minimum physical standards for the job provided that all applicants are subjected to the examination; the minimum physical standards for employment are related to the person's ability to perform the essential functions of the job applied for; and the medical examination results are given the same consideration in employment decisions for all applicants regardless of any physical or mental impairment.

Missouri law provides that a person who uses alcohol or drugs and is impaired is not entitled to claim a “disability” under the MHRA. However, a person may be disabled if the person has successfully completed a supervised drug rehabilitation program and is no longer engaged in the illegal use of or addicted to drugs; is participating in a supervised drug rehab program and is no longer using drugs; or is erroneously regarded as currently using or being addicted to drugs.

**6. Religious Discrimination, Mo.Rev.Stat. § 578.115; Mo. Code. Regs. tit. 8 § 60-3.050**

Missouri law prohibits employers from discriminating against an employee or prospective employee based on his or her refusal to work on his or her normal day of worship. To date, no Missouri court has interpreted this statute. The employer in Missouri is obligated to make reasonable accommodations to the religious needs of employees and prospective employees where the accommodations can be made without undue hardship to the employer’s business. For instance, an undue hardship may arise when the employee’s needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer.

**7. Age Discrimination, Mo.Rev.Stat. § 213.055**

In Missouri, an employer is prohibited from discriminating against employees or applicants who are age 40 or older, but less than 70 years of age. This differs from the federal law which has no upper limit. An exception exists for an employer requiring the compulsory retirement of any employee who has attained the age of 65 and who, for the two-year period immediately preceding retirement, is employed in a bona fide executive or high policy-making position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$44,000.

An employer may institute a seniority system so long as the intent of the system is not to discriminate. For example, an employer may institute a seniority system that increases wages when employees have been with the company for a designated number of years; however, an employer may not increase wages merely because an employee has reached a certain age.

**8. Sexual Orientation**

While neither Missouri nor federal law considers sexual orientation to be a protected class, there are a number of municipalities with civil rights ordinances, policies or proclamations prohibiting sexual orientation discrimination, including the following:

- Kansas City, Missouri
- Columbia, Missouri
- St. Louis, Missouri

**9. Additional Discrimination Prohibited**

**a. HIV And AIDS, Mo.Rev.Stat. § 191.665**

Missouri law provides that the provisions of the MHRA also apply to individuals with HIV infection, acquired immunodeficiency syndrome and acquired immunodeficiency syndrome related complex. This protection does not include individuals who have a currently contagious disease or infection and who, as a result, would pose a direct threat to the health or safety of other individuals or who are unable to perform the duties of their employment. Employers must maintain the confidentiality of records concerning a person's HIV test result or HIV infection status.

**b. Persons With Visual, Hearing Or Physical Disabilities, Mo.Rev.Stat. §§ 209.160, 209.162**

It is an unlawful employment practice for any employer to discriminate against any person with a visual, hearing or physical disability by interfering – directly or indirectly – with the use of an aid or appliance, including a guide dog, hearing dog or service dog used by such person.

**c. Granting Loans, Mo.Rev.Stat. §§ 108.470,443.863**

It is unlawful for any revenue bond authority to deny a residential real estate loan to a person because of the geographic location of the real estate or to discriminate on the basis of the applicant's race, color, religion, national origin, handicap, age, marital status, or sex, or the race, religion or national origin of persons living in the vicinity of the residential property. Likewise, it is unlawful discrimination to refuse loans or to vary the terms of loans or the application procedures because of the borrower's race, color, religion, national origin, age, gender or marital status or the geographic location of the security.

**d. Extending Credit, Mo.Rev.Stat. § 408.550**

It is unlawful to deny credit upon proper application to persons on the basis of sex, marital status, age, race or religion.

**E. Employee Activities**

**1. Jury Duty, Mo.Rev.Stat. § 494.460**

An employer is not required to pay for wages lost because of jury service. An employee may not be required to take sick, vacation, or personal time because of jury duty. However, if an employer has five or fewer employees and two or more were summoned for jury duty during the same time period then the court shall automatically postpone that employee's jury duty summons.

Further, an employer may not discipline, discharge or take adverse action against an employee because of the employee's jury summons or service. An employee discharged for jury duty reasons may bring civil action within 90 days of discharge for recovery of lost wages, other

damages and reinstatement. Further, if the employee prevails he shall receive reasonable attorney's fees.

**2. Military Duty And Re-Employment Rights, Mo.Rev.Stat. §§ 40.490, 41.730**

Employers are prohibited from discouraging employees to join the state military or from retaliating against employees who serve. Employees who are ordered under active state military duty to serve are given the same re-employment rights as members of the U.S. military. That is, if an employee is called for active duty for state military duty then the employer must re-employ him/her upon return from duty.

**3. Leave Of Absence For Voting, Mo.Rev.Stat. § 115.639**

Any employee who is entitled to vote at any election in the state is allowed three hours between the time of the opening and the time of closing of the polls to vote. Employers are not required to release an employee to vote if there are three successive hours while the polls are open in which the employee is not working. Likewise, if there are two consecutive hours while the polls are open in which the employee is not in the service of the employer, the employer need only allow the employee one hour off work. The employee must make a leave of absence request prior to the voting day and the employer can choose which three successive hours of the working day the employee may use to vote. An employer may not deduct wages if the employee utilizes the voting leave right.

**4. Political Activities Of Employees, Mo.Rev.Stat. § 115.637**

An employer may not prevent an employee from engaging in political activities, holding political office, being a member of a political committee, soliciting or receiving funds for political purposes, or signing petitions related to law.

**5. Worker's Compensation Retaliation, Mo.Rev.Stat. § 287.780**

An employer is prohibited from discharging or discriminating against an employee who has exercised his or her rights under the worker's compensation law.

**6. Whistleblower Discrimination**

**a. Hospital Employees, Mo.Rev.Stat. § 197.285**

Hospitals are required to establish a written policy concerning protection of employees that report on mismanagement of the hospital and its facilities. The policy must allow employees to remain confidential if they make reports about mismanagement. Each hospital must also have a compliance officer that is responsible for implementing the policy.

**b. Nursing Home Employees, Mo.Rev.Stat. § 198.006 And §198.070**

Employees who report violations of any law in a nursing home facility are protected from retaliation by their supervisors.

## **7. Breast-Feeding In The Workplace, Mo.Rev.Stat. § 191.918**

While there is no Missouri law that specifically addresses an employer's obligation regarding breast-feeding in the workplace, the law does provide that a mother may not be prohibited from breast-feeding her child in any location, public or private, where the mother and child are authorized to be present.

## **V. WORKPLACE SAFETY**

### **A. General Provisions**

No Missouri statute specifically regulates safety and health in the workplace such as the federal Occupational Safety and Health Administration ("OSHA"). A Missouri employer owes a common law duty to the employee to use all reasonable care to provide a safe workplace. The employer also has a duty to protect employees from avoidable perils and to ensure that suitable instrumentalities are properly used. Chapters 291 (Industrial Inspection), 292 (Health and Safety of Employees) and 293 (Mining Regulations) of the Missouri statutes address the health and safety of employees.

Specifically, Chapter 292 delineates safety standards including a duty to protect employees from occupational diseases incident to the work and to protect employees from certain materials and articles used in work areas and considered especially dangerous to the health of employees. Employers in "hazardous occupations" have additional statutory duties to prevent occupational diseases as set forth in Chapter 292.

OSHA operates local offices in Missouri that regulate safety and health. The Missouri Department of Labor provides consulting services to both private and public employers to assist in eliminating workplace hazards and meeting OSHA standards. The Missouri Division of Labor's On-Site Safety and Health Consultation Program is a free and confidential service offered to Missouri employers to comply with federal OSHA regulations.

### **B. Smoking, Mo.Rev.Stat. §§ 191.765 To 191.773**

Missouri law restricts smoking to designated areas in public places. Public places are defined as any indoor area used by the general public or serving as a place of work. The following is a list of exempt areas from the Missouri no smoking statute:

- taxicabs or limousines;
- any place where more than 50% of the volume of trade is derived from tobacco;
- bars, taverns, and restaurants serving fewer than 50 people;
- bowling alleys and billiard halls;
- private residences;

- any area used for sporting events that seats more than 15,000 people; and
- other areas that are legally designated for smoking.

Persons having control and custody over public places can designate “smoking areas” so long as not over 30% of the public place is designated for smoking use and the local fire marshal has not prohibited smoking in the public place. The person having control and custody over the public place must erect appropriate signs to designate “smoking” and “non-smoking” areas. For example, a manager of a restaurant can designate smoking areas so long as less than 30% of the restaurant is for smoking and appropriate signs are placed throughout the designated areas.

**a. Smoking In Child Care Facilities, Mo.Rev.Stat. §§ 191.776, 191.777**

Smoking is prohibited in any area of a child care facility licensed by the state Division of Family Services during the time that children are present.

**b. Off-Hours Smoking Permissible, Mo.Rev.Stat. § 290.145**

Employers cannot refuse to hire, discharge or otherwise disadvantage someone with respect to compensation or other terms and conditions of employment based on off hours use of tobacco unless it interferes with job performance.

**C. Concealed Weapons, Mo.Rev.Stat. § 571.107**

Missouri residents 23 years of age or older may apply for a concealed weapon endorsement enabling them to carry a concealed weapon. The law identifies a number of public places (i.e., police stations, courthouses, airports, schools) which do not allow persons to carry concealed weapons on the premises and also permits other public and private property owners to post a notice that concealed weapons are not permitted on the premises. The statute contains specific requirements for the size and location of this notice.

A private employer must post a notice advising that concealed weapons cannot be carried onto the premises to lawfully protect against weapons in the workplace. Possession of a firearm in a vehicle on the employer’s premises is not prohibited by law so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the employer’s premises. However, an employer may prohibit an employee or other persons holding a concealed carry endorsement from carrying a concealed firearm in vehicles *owned by the employer*. In addition to the concealed carry endorsement, Missouri law now permits persons at least 21 years of age to transport a concealable weapon in the passenger compartment of a motor vehicle. No concealed carry endorsement is required to do so.

#### **D. Workers' Compensation Law, Mo.Rev.Stat. § 287.380**

For workers' compensation, the general rule is that any employer with five or more employees is covered under Missouri Workers' Compensation Law. However, in the construction industry, employers who erect, demolish, alter or repair improvements and have one or more employees, are covered employers as well. A person who works for more than five days for a covered employer is considered covered for purposes of workers' compensation. It is unlawful for any employer to discharge or in any way discriminate against any employee for exercising his or her rights under Missouri Workers' Compensation Law.

Employers must report all injuries to their insurers or third party administrator within five days of the date the employee reported the injury to the employer or within five days of the injury – whichever is longer. Employers (or their insurers) must notify the Division of Workers' Compensation within ten days after receiving knowledge of an accident resulting in personal injury to any employee. An employer has one month from the date of filing the original notification of injury filed with the division to file a full and complete report of every injury or death to any employee for which the employer would be liable to furnish medical aid (not first aid which does not result in further medical treatment or lost time from work).

Missouri employers are required to post a notice of worker's compensation rights in a conspicuous place. Every employer subject to Missouri Workers' Compensation Law is liable, regardless of negligence, to compensate employees for personal injury or death by accident arising out of and in the course of employment. No compensation is allowed for self-inflicted injury.

##### **1. Changes In Compensation**

There is a 15% increase in benefits if an injury is caused by the employer's failure to comply with any state statute or any lawful order of the division or commission.

There is a 15% reduction in benefits if an employee willfully fails to use safety devices provided by the employer or otherwise fails to obey any reasonable rule adopted by the employer for employee safety. To avail itself of this reduction, the employer must show that the employee had actual knowledge of the rule and that the employer made a diligent effort to cause his employees to use the safety device(s) and to obey the rule adopted for employee safety.

There is a 15% reduction in benefits when an employee fails to obey a posted rule or policy relating to the use of alcohol or non-prescribed controlled drugs in the workplace and the injury was sustained in conjunction with the use of alcohol or non-prescribed controlled drugs provided it is shown that the employee had actual knowledge of the employer's rules or policies and the employer made a diligent effort to inform the employee of the requirement to obey any reasonable rule or policy adopted.

An employee forfeits benefits when the use of alcohol or non-prescribed controlled drugs (in violation of the employer's posted rule or policy) is the proximate cause of the injury. There is no forfeiture when the employer had actual knowledge of the employee's use of alcohol or non-prescribed controlled drugs and failed to take any disciplinary action or when the employee is authorized to use alcohol or non-prescribed controlled drugs as a part of employment.

An employee forfeits benefits when participating in a voluntary recreational activity or program that is the proximate cause of injury regardless of the employer's promotion, sponsorship or support for the recreational activity program. But, there is no forfeiture when the employer directly ordered the employee to participate; when the employee was paid wages or travel expenses while participating; or when the injury from the activity/program occurs with the knowledge of the employee's participation and of the unsafe condition yet failed to curtail the activity/program or cure the unsafe condition.

## **2. Joint Employers, Mo.Rev.Stat. § 287.130**

In the event an injury or death occurs while an employee is in the joint service of two or more employers, their liability is joint and several. The employee may hold one or all responsible. The employers have a right of contribution from each other in proportion of their several liability for the wages of the employee. The law does not prohibit the employers from making a different distribution of their proportionate share of liability.

## **VI. CONCLUSION**

Employers in Missouri are subject to numerous state and federal laws regulating nearly every area of labor and employee relations. This booklet provides a basic summary of Missouri labor and employment law under which employers must operate their business or workplace. Our hope is that by providing this summary we will give employers a useful reference to help them quickly answer some of the common, everyday employment questions that can and do arise. We have tried to write this booklet from the perspective of the employer so that the law is presented in a way that makes it easy for employers to understand what Missouri law requires of them as well as what it allows them to do in various situations.

First and foremost this booklet should be used to guide the actions of employers by helping them better understand Missouri labor and employment law so they may develop policies and procedures which allow them to successfully avoid a lawsuit.

Second, this booklet is also intended to help employers make more legally informed decisions so that when lawsuits do arise they will be in a stronger legal position from which to defend. Finally, the scope of this booklet deals only with Missouri labor and employment law, even though aspects of federal law were briefly discussed, and an employer must consider any labor or employment issue in light of both applicable state and federal law.

For further information contact any attorney in the Kansas City office of Fisher & Phillips LLP at 816.842.8770 or visit our website at [www.laborlawyers.com](http://www.laborlawyers.com).