

## Missouri and Illinois Employment Law Update

### Sexual Orientation- Protected (Or Not)

**Although federal and state anti-discrimination laws are similar in many respects, they are not identical. One area where this is most apparent is the protections, if any, provided to employees based on sexual orientation. Indeed, while Federal, Missouri and Illinois law similarly prohibit discrimination based on race, national origin, sex, age and disability, they differ when it comes to sexual orientation.**

**The state of Illinois is considered one of the most progressive states in the country in regard to lesbian, gay, bisexual and transgender rights and the employment arena is no exception. In Illinois, most employers are subject to the Illinois Human Rights Act (“IHRA”). The IHRA has long prohibited discriminatory employment practices based on the “more traditional” protected classes identified above. What many Illinois employers do not realize, however, is that the Illinois Human Rights Act also prohibits employers from discriminating against employees based on sexual orientation. This is the law in Illinois and has been since 2006. According to the IHRA, “sexual orientation” is**



**defined as “actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person’s sex at birth.” Recognizing that this definition is broad in scope, Illinois employers must be aware of the protections provided by the law to their employees. In other words, an employer cannot refuse to hire, fire, demote or otherwise taken material adverse action against an employee because the employee is a homosexual, transsexual or transgendered person.**

**While Illinois is considered progressive on the issue, Missouri is not. The Missouri Human Rights Act (“MHRA”), at least expressly, does not afford protections to employees based on their sexual orientation. The MHRA, in other words, prohibits employers from discriminating against employees based on their race, national origin, age, disability, etc., but not based on their sexual orientation. The scope of the protections afforded by the Act was the subject of a Missouri Appel-**

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For more information about this update, please contact Richard Korn or any member of Fox Galvin's Employment Practice Group at 314-588-7000.

late Court decision issued on October 29, 2015.

In *Pittman v. Cook Paper Recycling Corp.*, <https://www.courts.mo.gov/file.jsp?id=93579> the Court held that discrimination based on sexual orientation does not constitute discrimination based on sex under the plain language of the MHRA. Although the ruling was clear, the Court seemingly recognized that the issue is an evolving one as it further held: "No matter how compelling [Plaintiff's] argument may be and no matter how sympathetic this court or the trial court may be to [Plaintiff's] situation, we are bound by the state of the law as it currently exists." Although the Appellate Court's decision is binding on circuit courts situated in the Western District of Missouri, and will likely be considered strongly instructive to all Missouri Appellate Courts, the plaintiff has asked the Missouri Supreme Court to review the case. Consequently, the issue is far from settled in Missouri.

Regardless of whether an employer is located in Missouri or Illinois, it must be proactive in its effort to prevent workplace-related discrimination and harassment. For employers in Illinois, ignoring or mishandling complaints from employees who

claim they are being unfairly treated on account of their sexual orientation can result in significant legal liability, not to mention unwanted media attention and damage to its community reputation. Even in Missouri where sexual orientation discrimination is (at least for now) not protected, an employer can still be sued by an employee who claims he or she was unlawfully discriminated against because of sexual orientation. In other words, Missouri law may prevent an employee from *prevailing* in a lawsuit, it does not prevent an employee from *filing* a lawsuit, thus requiring an employer to expend time, money and significant effort defending itself. Moreover, many municipalities in Missouri, including the City of St. Louis and St. Louis County, have enacted ordinances which prohibit discrimination on account of sexual orientation. For these reasons, as well, Missouri employers must take steps to not only prevent sexual orientation discrimination from occurring (*e.g.*, with well-crafted policies and training) but also respond immediately and thoroughly if a complaint is made.