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REQUEST FOR ACCOMMODATION WILL NOT SUPPORT RETALIATION CLAIM UNDER MISSOURI HUMAN RIGHTS ACT, SCOMO HOLDS

Feb 04, 2020

Under Missouri law, a request for accommodation cannot serve as the basis for a retaliation claim. Last month, the Supreme Court of Missouri issued a unanimous opinion in *Lin v. Ellis*, No. SC97641, 2020 WL 203145, at *5, --- S.W.3d ---- (Mo. banc Jan. 14, 2020) (per curiam), holding that "a mere request for an accommodation does not fall within the plain language of either the opposition or participation clause of" the Missouri Human Rights Act ("MHRA"), Mo. Rev. Stat. § 213.070.1(2).

The *Lin* case arose out of an employee's request from her employer to accommodate her request to avoid tasks that aggravated her chronic back pain after being diagnosed with two herniated discs. Without requesting a doctor's note, the employer provided the requested accommodation. Subsequently, the employee's back pain worsened, and she asked to be excused from performing certain tasks that required her to work at a bench with her back bent for extended periods of time. The employer accommodated this request too and assigned her work that did not exacerbate her herniated discs.

After an internal complaint was filed against the employee, the employer asked human resources to initiate a process with a view toward terminating the employee. Simultaneously, the employer was informed that funding for the employee's work under a grant was set to expire, thereby eliminating funding for the employee's position. After the employer informed the employee that the funding for her work was set to expire, and after discussing other work the employee could perform in light of her back restrictions, human resources requested that the employee provide a doctor's note regarding her back condition and the need for accommodations, which the employee submitted. The doctor's note stated that the employee was to avoid excessive bench work to prevent reinjuring and exacerbating her herniated discs.

Eventually, the employer notified the employee that her position would be eliminated due to a lack of funding. The employer informed the employee that she was eligible to transfer to another position that she was qualified to perform, offered to provide the employee with a letter of reference, and attempted to find work for the employee elsewhere that would accommodate the employee's

back restrictions. Despite applying for multiple positions, the employee was neither interviewed nor offered any position, and her employment was terminated.

After receiving a right-to-sue letter from the Missouri Human Rights Commission, the employee sued her employer for retaliatory discharge under the MHRA, alleging that she was fired for requesting a reasonable accommodation from her employer for her disability. After the jury returned a favorable verdict for the employee, the employer appealed, and the case ultimately made it to the Supreme Court of Missouri on transfer.

The issues in *Lin* were ones of first impression in Missouri: whether a request for accommodation is a protected activity under the MHRA and, if so, whether such protected activity may serve as the basis for a retaliation claim. The court in *Lin* held that

> merely requesting an accommodation is insufficient to support a claim of retaliation under the plain language of the MHRA because such a request, standing alone, does not constitute opposition to a practice prohibited by the MHRA, nor does it constitute the filing of a complaint, testifying, assisting, or participating in any investigation, proceeding or hearing conducted under the MHRA.

2020 WL 203145, at *1.

The court's holding in *Lin* deviated from well-established federal employment discrimination case law interpreting a similar provision of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12203(a), that provides that a mere request for an accommodation is a protected activity sufficient to support a retaliation claim. *See, e.g.*, *Solomon v. Vilsack*, 763 F.3d 1, 15 n.6 (D.C. Cir. 2014) (collecting cases from the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits). However, the court in *Lin* noted that those federal circuit courts "echo[ed] concerns" over whether merely requesting an accommodation fell within the text of § 12203(a) and that the federal circuits' holdings were merely a "supposition of Congressional intent." 2020 WL 203145, at *4–5.

The court in *Lin* was guided by the plain language of the MHRA rather than federal case law because the federal case law was not consistent with the text of the MHRA, the best evidence of the Missouri General Assembly's legislative intent. The MHRA prohibits an employer from retaliating against an employee for "oppos[ing] any practice prohibited by" the MHRA or because an employee "filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding or hearing conducted pursuant to" the MHRA. Section 213.070.1(2). The court in *Lin* found "[n]othing in this language" that "includes a retaliation claim based on a mere request for an accommodation." 2020 WL 203145, at *5. Thus, the court was unwilling to rewrite the MHRA to provide the employee "a cause of action where one does not exist." *Id.*

The *Lin* decision is ground-breaking precedent in the Missouri employment law context for any employer facing a lawsuit alleging retaliatory discharge under the MHRA on the basis of a request

to reasonably accommodate a disability. Of course, the court's decision in *Lin* is subject to abrogation by an amendment to the applicable provision of the MHRA if the Missouri General Assembly passes such an amendment. And, nothing in *Lin* changes the landscape in federal employment discrimination law, absent an amendment by Congress to the analogous provision of the ADA altering the federal circuit courts' interpretation.

Bryan Cave Leighton Paisner LLP has a team of knowledgeable lawyers and other professionals prepared to help employers review their employee policies. If you or your organization would like more information on any state-specific laws or any other employment issue, please contact an attorney in the Employment and Labor practice group.

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