

Employment Issues in the Workplace

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Insurance for the Employer

- Employment Practices Liability Insurance (EPLI)
- Directors & Officers (D&O)
 - Who is covered?
 - What does the policy cover?
 - Punitive damages
- Missouri statutory protection for non-profit organizations

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Vernon's Annotated Missouri Statutes Currentness
Title XXXVI. Statutory Actions and Torts
Chapter 537. Torts and Actions for Damages (Refs & Annos)

537.117. Officers or members of certain corporations, charities, organizations or clubs immune from personal liability for official acts, exceptions

Any officer or member of the governing body of an entity which operates under the standards of section 501 (c) of the Internal Revenue Code of 1986, who is not compensated for his services on a salary or prorated equivalent basis, shall be immune from personal liability for any civil damages arising from acts performed in his official capacity. The immunity shall extend only to such actions for which the person would not otherwise be liable, but for his affiliation with such an entity. This immunity shall not apply to intentional conduct, wanton or willful conduct, or gross negligence. Nothing herein shall be construed to create or abolish an immunity in favor of the entity itself.

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537.118. Volunteers, limited personal liability, certain organizations and government entities, exceptions

1. As used in this action, the following terms mean:
 - (1) **"Nonprofit organization"**, an entity which operates under the standards of section 501(c) of the Internal Revenue Code of 1986 as amended;
 - (2) **"Prorated equivalent basis"**, any other basis for compensation except that used to compensate for expenses actually incurred; and
 - (3) **"Volunteer"**, an individual performing services for a **nonprofit organization** or a government entity who is not compensated for his services on a salary or prorated equivalent basis. The term shall not include those covered by section 537.117.

2. Any volunteer of a **nonprofit organization** or governmental entity shall be immune from personal liability for any act or omission resulting in damage or injury to any person intended to receive benefit from such volunteer's service if:

- (1) The volunteer acted in good faith and within the scope of his official functions and duties with the organization or entity; and
- (2) The damage or injury was not caused by the intentional or malicious conduct or by the negligence of such volunteer.

3. Nothing in this section shall be construed to create or abolish an immunity in favor of a **nonprofit organization** or a governmental entity.

4. The provisions of this section shall apply to all causes of action accruing after August 28, 1989.

Individual Liability
Under the
Missouri Human Rights Act

A Plaintiff's New Ace Card

Tamara Cooper, v. Albacore Holdings, Inc., d/b/a Ability Solutions, Inc., Mo. Ct. App. E. D. (August 29, 2006)

Held: The plain and unambiguous language within the definition of "employer" within the MHRA imposes individual liability in the event of discriminatory conduct.



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V.A.M.S. 213.055

Vernon's Annotated Missouri Statutes Currentness
Title XII. Public Health and Welfare
Chapter 213. Human Rights (Refs & Annos)

213.055. Unlawful employment practices

1. It shall be an unlawful employment practice:

(1) For an employer, because of the race, color, religion, national origin, sex, ancestry, age or disability of any individual:

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V.A.M.S. 213.010

Vernon's Annotated Missouri Statutes Currentness
Title XII. Public Health and Welfare
Chapter 213. Human Rights (Refs & Annos)

213.010. Definitions

As used in this chapter, the following terms shall mean:

(7) "**Employer**" includes the state, or any political or civil subdivision thereof, or any person employing six or more persons within the state, and any person directly acting in the interest of an employer, but does not include corporations and associations owned and operated by religious or sectarian groups;

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What Individual Liability Means to You

- In addition to liability imposed on the company as a separate entity, it may also be imposed on certain individuals within the company.
- This may include individual officers, supervisors, managers, and anyone who acts on behalf of the Company.
- **BOTTOM LINE:** Your POCKETBOOK is at stake, both directly and indirectly.

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Common Employment Law Issues

- Employee Handbooks
- Written Information Maintained by the Employer
- Hostile Environment Harassment
- Retaliation
- Investigating Complaints

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Employee Handbook

- Do you have an Employee handbook?
- How are revised policies communicated to employees?
- Is the handbook written in clear, concise, easy-to-read, non-legalistic language?
- Was the handbook drafted specifically for your organization or “rebadged?”

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Written Information

- Job Descriptions
- Policies & Handbooks
- Procedure Manuals
- Offer Letters/Applications
- Compensation and Benefit Plans
- Online Information (intranet and/or internet)
- Sample personnel files
 - Recommended to be reviewed by legal professional.

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Hostile Environment Harassment

- Unwelcome conduct
- Based on a protected status
- Severe and pervasive

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“Unwelcomeness” = Beware

- Intention vs. Perception
- Employee need not object to offensive behavior
- Relationships change
- “Drive-by” harassment happens

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How do you know conduct is unwelcome?

- Body language
- Avoidance
- Rejection
- Complaints



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How much is enough?



Frequency

Seriousness

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RETALIATION



An employer cannot retaliate against employees who:

- Oppose unlawful discrimination and/or harassment
- Make good faith complaints of discrimination and/or harassment
- Cooperate or participate in a harassment investigation

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RETALIATION

What is prohibited retaliation?



- Ignoring an employee
- Spreading rumors about an employee
- Undesirable work assignments
- Withholding pay increases
- Failure to hire or promote
- Poor performance evaluations
- Demotion, discharge, elimination of position
- Further harassment

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What is a "Complaint?"

- A formal grievance to the appropriate supervisor/human resources representative or other member of management.
- An informal complaint by someone who "wants the company to know" the conduct is occurring but does not want to take action.
- A complaint by a co-worker, customer, or other witness to harassment.
- Rumors inappropriate conduct is occurring.

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HOW DO YOU PUT A STOP TO INAPPROPRIATE CONDUCT?

Take **ALL** complaints seriously:

- It does not matter if the employee complaining or raising the concern is a "direct report."
- It does not matter if the complainant is a witness, a friend, or an "anonymous source," as opposed to the victim of the harassment.
- It does not matter if the employee is complaining about a co-worker, a supervisor, or a member of management.
- **DO NOT** "prejudge" a complaint – remember your role as a neutral.

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HOW DO WE PUT A STOP TO INAPPROPRIATE CONDUCT?

- Handle the issue of confidentiality appropriately:
 - **DO NOT** "guarantee" absolute confidentiality
 - **DO** inform the employee(s) involved of your **LEGAL** obligation to bring the issue to the attention of the appropriate individuals.
 - **DO NOT** unnecessarily discuss the complaint with others, including other supervisors OR members of management.

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WHAT ADDITIONAL STEPS DO WE TAKE TO HELP THE COMPLAINANT?

- **DO** assure the employee that his/her complaint will be investigated promptly and objectively;
- **DO** remind the employee the company will not tolerate retaliation of any kind for making a good faith complaint;
- **DO** remind the employee of the company's policy prohibiting inappropriate harassment.

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WHAT STEPS DO YOU TAKE TO ENSURE INAPPROPRIATE CONDUCT STOPS?

- **DO NOT** discuss the complaint casually with other employees or supervisors;
- **DO** assist in any investigation to the extent requested;
- **DO** support any remedial action taken;
- **DO** ensure retaliation does not occur.

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- Previously Submitted Questions
- Other Questions

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Our sales department would like to change their performance appraisal format. One of the questions they would like to be included is “Why do you love life?”. Many of the employees’ responses will be more personal than professional reasons. They are also going to be asked for their goals and how they expect to achieve those goals financially. I have expressed my concern in regards to people’s responses. Any thoughts of discrimination issues?

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What is meant by the term “wrongful discharge public policy claims?”

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