

Post-Employment Discrimination under Missouri Worker's Compensation Law? Court of Appeals Says No, But Asks Supreme Court to Decide

AUTHOR: JAMES KEANEY

CONTRIBUTOR: PHILIP GRAHAM

The case—*Lisle v. Meyer Electric Co., Inc.*—involves claims by a former employee that he was fired and later denied re-hire because he exercised rights under Missouri's Worker's Compensation law. The plaintiff originally filed a lawsuit based on his discharge. He later filed a separate lawsuit based on the employer's refusal to re-hire him.

The trial court entered judgment in favor of the employer on the latter claim, as the plaintiff was not an employee when the employer refused to hire him.

On appeal, the Western District characterized the case as involving a question of first impression. "The question framed in this case is whether [plaintiff] was an 'employee' and [defendant] was an 'employer' pursuant to [the anti-discrimination provision of Missouri's Worker's Compensation Law] when [defendant] refused to rehire [plaintiff]" after having been fired the year before.

The Court of Appeals concluded plaintiff was not an "employee" (as defined by the statute) at the time he applied for rehire and therefore the anti-discrimination law did not protect him.

The Court then responded to, and rejected as unpersuasive, each of the plaintiff's arguments. Among other things, the Court declined to analogize Missouri's Worker's Compensation Law to Title VII, the Fair Labor Standards Act, or case law interpreting those laws.

However, in an unusual move, the Court of Appeals transferred the case to the Missouri Supreme Court, instead of deciding it itself, because it presented a question of “general interest and importance”—that is, whether a Worker’s Compensation retaliation claim can be made based on a former employer’s post-employment relationship conduct.

The Court acknowledged its conclusion would “effectively permit retaliation for the exercise of rights under the Worker’s Compensation Law to occur without recourse so long as the retaliatory conduct is engaged in after an employment relationship has ended.” This could, the Court suggested, result in a “potential chilling effect” on the exercise of rights under the law.

However, the Court emphasized a “competing inequity” if such claims were allowed. The Court recognized, if the anti-discrimination law “is construed to expose an employer to claims of retaliation based on conduct that occurs after an employment relationship has ended, that exposure would be perpetual, and could have a potential chilling effect on the former employer’s willingness and ability to defend worker’s compensation claims that are not filed, or that are not fully resolved, until after the employment relationship has ended.”

Indeed, as the Court observed, “[t]hese competing policy concerns are weighty.” All Missouri employers should carefully track this decision as its outcome could have significant impact on them as they handle any workplace injuries, especially those of former employees.

Our best guess is that the Supreme Court will likely agree with the Court of Appeals. The Court of Appeals made many strong legal arguments and points about why the law does not and should not apply to former employees. And, while the Court of Appeals transferred the case due to weighty policy concerns, courts generally do not engage in policymaking. That function rests with the legislature. Of course, only time will tell how the Supreme Court views the matter. So, stay tuned.