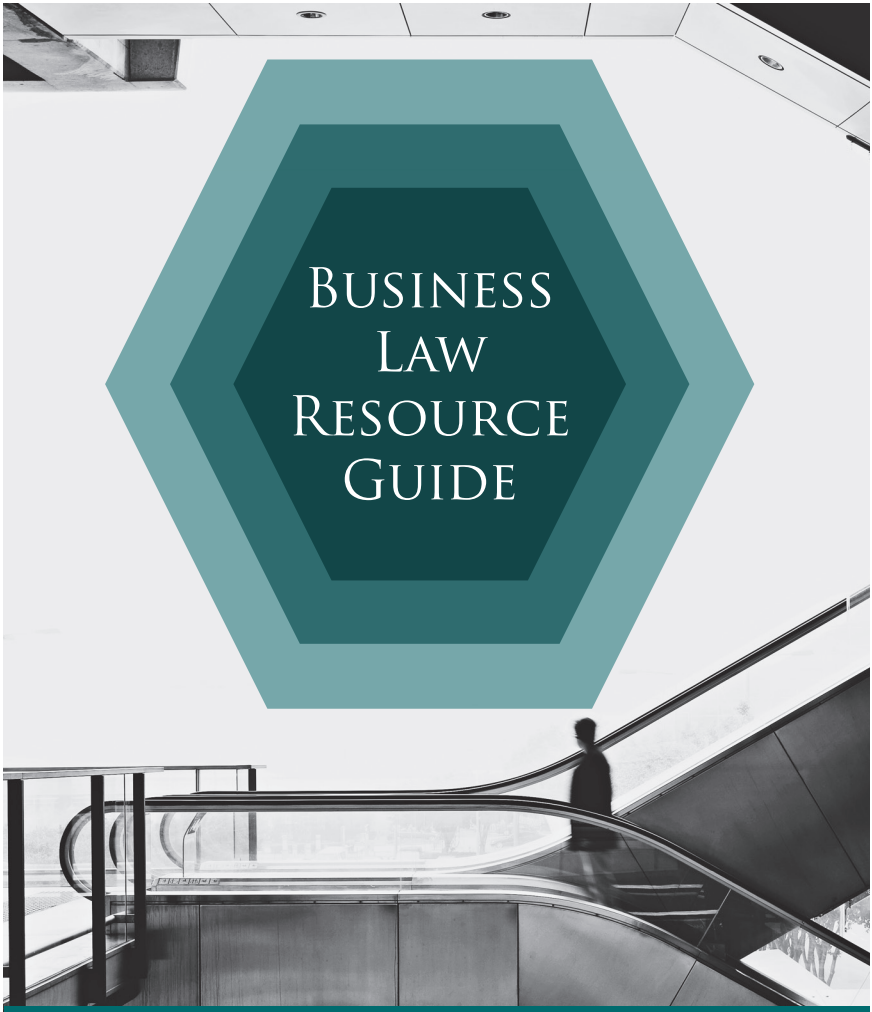

Business Law Resource Guide

LEX

THE MISSOURI BAR

- bankruptcy
- business organizations
- disability discrimination in employment: rights and responsibilities under federal and state law
- your rights under the missouri workers' compensation law

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BANKRUPTCY

What These Words Mean

Automatic Stay: Filing a bankruptcy stops a debtor's creditors from calling them, writing them, repossessing, or foreclosing. All collection actions must stop. The stay may not be automatic for a repeat filer.

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA): Act that added additional requirements for the filing of and/or successful completion of a bankruptcy.

Credit: Financial trustworthiness – a person with good credit will be able to get loans in the future; a person with bad credit will not be able to get loans.

Credit Counseling Agency: In order to file a bankruptcy under either a Chapter 7 or a Chapter 13, a person must first complete an approved credit counseling class from an approved credit counseling agency. The list of approved credit counseling agencies is available on the court's website. A person can use a certificate of completion from the class for six months.

Credit Reporting Agency: A company that tells people who are about to loan you money whether you have paid back loans in the past and whether you pay your bills on time.

Creditor: The person to whom you owe a debt.

Debt: The amount of money you owe to a creditor.

Debtor: A person who declares bankruptcy.

Discharge: A court order stating that debtors do not have to pay their dischargeable debts; a debt that is discharged in bankruptcy need not be paid.

Equity: The amount that your property is worth over the amount you owe on it; for example, if your car is worth $5,000 and you owe the bank $3,000 on it, your equity in the car is $2,000.

Exemptions: Laws that allow a person to keep certain property even though he/she has declared bankruptcy. If a person has not lived in the state of Missouri for the last two years, that person may have to use other state's exemptions or federal exemptions.

File: To give a paper to the court. Filing may be done electronically, pursuant to court requirements.

Financial Management Agency: To obtain a discharge under either a Chapter 7 or a Chapter 13 bankruptcy, a person must complete an approved financial management class from an approved financial management agency. The list of approved financial management agencies is available on the court's website. A certificate of completion must be filed with the court timely to obtain a discharge.

Lien: If a creditor has a lien on a piece of your property and you do not pay off the loan, the creditor can take that property from you.

Means Test: To determine whether a person can file a Chapter 7 and how much a person must pay back in a Chapter 13 to unsecured creditors, a means test must be completed on Form B22A for Chapter 7 bankruptcies and Form B22C for Chapter 13 bankruptcies. A statutory formula is used to determine if the debtor's income is above or below the median income.

Median Income: Median income is the average monthly income for a household pursuant to Internal Revenue Service guidelines. The list of median family income is available on the court's website, and changes periodically.

Meeting of Creditors: Also known as the 341 meeting. The debtor will be examined at a meeting of creditors. Several days before the meeting, a debtor must supply documents to the trustee, including: the most recently filed federal and state income tax returns; 60 days of pay advices counting backwards from when the case was filed; and bank statements for the filing date.

Plan: The payment plan that a debtor files in bankruptcy.

Schedules: The debtor's list of property with the value of the property, current income, and a list of creditors.

Trustee: The person who handles your bankruptcy; the trustee may sell your property in a Chapter 7 proceeding or collect payments from you and pay your creditors in a Chapter 13 proceeding, and conduct the meeting of creditors.

Venue: A person cannot file in the Eastern District of Missouri or the Western District of Missouri unless that person has been living in that district for more than 90 days prior to the filing of their bankruptcy.

Websites: If you need to find information on credit counseling agencies, financial management agencies, median income, or the filing requirements for a Chapter 7, 11, 12, or 13 bankruptcy, and you are filing in the Western District of Missouri, go to www.mow.uscourts.gov; if you are filing in the Eastern District of Missouri, go to www.moeb.uscourts.gov. Another good informational website is www.justice.gov/ust/.

What is Bankruptcy?

In bankruptcy, a person may restructure or discharge debts. There are two basic types of bankruptcies. In one type, the debtor pays either part or all of the debts under a payment plan over time. In another type, the majority of debtors will receive a discharge without paying creditors or losing property. If the debtor has assets that are not exempt, those assets may be sold, with the money from that sale paid to the creditors and the debts are discharged.

As soon as the debtor files bankruptcy, most creditors must stop trying to collect the money owed to them. An automatic stay goes into effect. The creditor will have to go through the bankruptcy court.

A person is allowed to keep some property and still go through bankruptcy. A person is allowed to keep property pursuant to his or her "exemptions." In Missouri, the major exemptions are: $15,000 worth of equity in a house, $3,000 worth of equity per person in vehicles, $3,000 worth of equity per person in household goods and furnishings, $3,000 worth of equity in tools of the trade, 100 percent of unmatured life insurance policies, $150,000 in cash surrender in life insurance, and all of certain pensions and retirement benefits.

There are four major forms of bankruptcy. Chapter 7 bankruptcy is a "liquidation," with non-exempt assets sold and debts discharged. Chapter 13 bankruptcy is a "wage earner payment plan," with debts paid off over time. Chapter 12 bankruptcy is a payment plan for farmers. Chapter 11 is a payment plan or liquidation for businesses.

It is sometimes possible to avoid bankruptcy through workout arrangements. Usually, both debtors and creditors want to avoid bankruptcy. Debtors and creditors can work together to avoid bankruptcy. Workout arrangements are often handled by your lawyer or groups providing debt counseling.

Bankruptcy will likely have a significant impact on your credit. This means you may not be able to get loans in the future. Credit reporting agencies usually list a Chapter 7 bankruptcy for 10 years and a Chapter 13 bankruptcy for seven years after the payment plan is finished. You have certain rights as to what information is included on your credit report.

What is the Bankruptcy Court System?

The bankruptcy court handles bankruptcy cases. Certain bankruptcy cases also have a trustee. If you have a trustee, the trustee will supervise your case. The trustees are in turn supervised by the Office of the United States Trustee (OUST). Your lawyer will help you complete the paperwork and give you valuable advice in dealing with both the court and the OUST.

What is Chapter 7 Bankruptcy?

Chapter 7 bankruptcy is designed to discharge debt. The trustee will collect all of the property that is not exempt and sell it to pay creditors. After this is done, the debtor will no longer owe the creditors any money. There is a fee to declare Chapter 7 bankruptcy.

Debtors usually keep their houses and cars in Chapter 7, but they must declare their intentions as to the property. 1) A debtor may reaffirm the debt by signing a reaffirmation agreement and continuing to pay the debt as if the bankruptcy had not occurred. A vehicle must be reaffirmed if it is to be kept. 2) A debtor may redeem the debt by paying what the property is worth, not how much is owed against it, in a lump sum one-time payment. Redemption is usually used for household goods, such as computers and furniture. 3) A debtor may surrender the property by returning it to the creditor. If the property is surrendered, the creditor cannot pursue the debtor for any deficiency after a sale of said collateral.

Sometimes, creditors take liens on furniture or household goods to make sure the debtor pays the debt on some other property. The debtor may have these liens removed in bankruptcy so long as they meet the exact definitions of what can be removed. Your lawyer will have to consult current case law to determine whether property falls within the definitions.

Some debts will not be discharged even in bankruptcy. These include debts involving fraud, accidents involving drunken driving, student loans in most situations, certain taxes, alimony and child support. Certain credit card transactions made within 70-90 days of bankruptcy may not be dis-

charged. Also, a person who has enough money to pay back all or most of his debts may not be able to declare Chapter 7 bankruptcy.

What is Chapter 13 Bankruptcy?

Corporations or partnerships may not declare Chapter 13 bankruptcy. The debtor must have a regular source of income, such as wages or salary from employment. A person with debts of more than $1.1 million secured or $360,000 unsecured may not file Chapter 13 bankruptcy. These numbers change periodically. There is a fee to declare Chapter 13 bankruptcy.

In Chapter 13 bankruptcy, if a debtor has an income less than the median income for a household of his or her size, then the debtor may propose a payment plan of only 36 months. If a debtor has an income greater than the median income for a household of his or her size, then the debtor must propose a payment plan of 60 months. The amount paid within the plan must be figured: 1) by completing the means test; 2) by making sure the plan pays the debtor's creditors at least as much as the creditors would receive in a Chapter 7 bankruptcy; and 3) by examining the debtor's net income minus the debtor's current monthly expenses to make sure the debtor is using "best efforts" to pay back creditors.

The bankruptcy court must approve the debtor's payment plan. A trustee looks at the debtor's schedules and payment plan. If the court approves the plan, the trustee collects payments from the debtor and pays the creditors. In Chapter 13, the debtor may keep all of his or her property, and may not have to pay their debt in full.

The debtor is not discharged from the debts until the payment plan is finished. More types of debt can be discharged in Chapter 13 than in Chapter 7, but debts for crimes, accidents involving drunken driving and student loans may not be discharged in Chapter 13.

What is Chapter 12 Bankruptcy?

Chapter 12 bankruptcy is a special chapter for "family farmers" with regular income. A "family farmer" is generally a person or business that receives at least half of its income from farming. A family farmer may declare Chapter 12 bankruptcy if the family farmer meets statutory eligibility requirements, subject to then-applicable debt requirements and limits.

Under Chapter 12 bankruptcy, the debtor gives a payment plan to the court and its creditors that shows how it will pay its debts over time. The debtor must pay its creditors at least as much as they would receive in a Chapter 7 bankruptcy.

The payment plan must be approved by the bankruptcy court. A trustee reviews the debtor's schedules and payment plan. If the court approves the debtor's plan, the trustee collects payments from the debtor and pays the

creditors. The debtor will be discharged from the debts when the plan is finished.

What is Chapter 11 Bankruptcy?

Chapter 11 bankruptcy is available to any individual, husband and wife, partnership or corporation. There is a fee to declare Chapter 11 bankruptcy. The debtor is allowed to continue to operate his or her business while working on a plan to restructure debts or sell assets to pay creditors. A Chapter 11 debtor must pay its creditors more than they would receive under a Chapter 7 bankruptcy.

A Chapter 11 plan must be approved by the bankruptcy court. The creditors will have a chance to vote on whether the court should approve the plan.

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Hiring a legal professional can be costly, but it is important to remember that you are paying for expertise. If you are unable to afford a lawyer, it might be possible to be represented at a lower rate or on a pro bono basis. In these situations, your quality of representation should not decrease, but your out-of-pocket costs will. The Missouri Bar does not match members of the public with pro bono lawyers, but it maintains a list of available discounted services, which is available at MissouriLawyersHelp.org.

Additionally, some matters, such as an uncontested divorce or traffic ticket, may not call for a lawyer at all. The Missouri Bar produces numerous brochures and blog posts – all available at MissouriLawyersHelp.org – that address general legal questions. While they are not a substitute for a hired lawyer, they are helpful for background information on matters and can help you decide if you need to seek representation.

For more information, go to MissouriLawyersHelp.org or call 573-635-4128.

BUSINESS ORGANIZATIONS

Forms of Business Organizations

Missouri presently allows individuals to operate a business under four forms of organizations:

- Sole Proprietorships
- Partnerships
- Corporations
- Limited Liability Companies

Sole Proprietorship

A sole proprietorship is really not an organization but rather ownership and corporation by one individual. Any one person who begins a business without deliberately creating another form automatically begins as a sole proprietorship. No formal creation is necessary, although if a sole proprietorship will be operated under a name other than the proprietor's, the business name should be registered with the Secretary of State.

Partnership

A partnership is a combination of individuals, called partners, who operate a business and share in the profits and losses of the business. Although no formal creation is necessary, individuals who wish to form a partnership should enter into a written agreement, called a Partnership Agreement or Articles of Partnership, which sets out all the terms of the relationship. In addition, the partnership should register its business name with the Secretary of State. Generally, the partners collectively make decisions concerning the partnership.

A **limited partnership** is a special type of partnership. In a limited partnership, the limited partners share in the profits and losses of the business, but they generally do not participate in the management of the limited partnership.

Missouri law also allows for the creation of a **limited liability partnership**, which permits one partner to be shielded from individual joint liability for partnership obligations created by another partner's or person's misconduct. A partner's liability is not limited, however, when

the misconduct took place under the supervision or control of the partner. Only liability arising from the misconduct of other partners or persons is covered by this law; the partnership is not relieved from liability for other partnership obligations and individual partners are liable for their own misconduct.

Corporation

A corporation is a more complex arrangement allowing for multiple owners but with centralized management. The owners, called stockholders, elect directors, who in turn elect officers to manage the affairs of the corporation. The individuals who wish to form a corporation, called incorporators, must prepare a formal written document called Articles of Incorporation. This document is then submitted to the Secretary of State for approval. Once approved, the Secretary of State issues a Certificate of Incorporation that authorizes the corporation to act. A corporation is then considered to act as a separate person.

There are two types of special corporations. A **subchapter S corporation** is a regular corporation but is recognized by the Internal Revenue Service as a special corporation afforded a different income tax treatment. The Internal Revenue Service has technical and complex rules concerning subchapter S corporations. Failure by the corporation or any of its shareholders to observe the rules could have significant adverse tax consequences.

Missouri also recognizes **non-profit corporations**. Missouri treats non-profit corporations somewhat differently and the Internal Revenue Service provides for a different income tax treatment for non-profit corporations.

Limited Liability Company

A limited liability company operates much like a partnership but with some of the advantages of a corporation. A formal written document called Articles of Organization must be prepared and submitted to the Secretary of State for approval. The owners, called members, manage the limited liability company unless the members provide in the Articles of Organization for centralized management by a manager, which could consist of more than one person and function much like the board of directors of a corporation.

Selection of a Business Organization

Although the choice of the type of business organization depends upon many factors in addition to those previously discussed, most selections are made for three reasons:

- Liability
- Income Taxes
- Funding

Liability

Liability concerns the extent to which an owner is responsible for the debts and charges against the organization. If an owner has "personal liability," she is totally responsible, and creditors may reach all personal funds of the owner — even if the funds are not invested in or part of the business. If an owner has "limited liability," his responsibility is limited to only the funds that he has invested in the organization. An evaluation of the risks and possible liabilities to be incurred in the operation of the business leads to the selection of the appropriate form of business organization.

A sole proprietor is personally liable for all debts of the business.

Generally, a partner is also personally liable for all the debts of the partnership. However, the liability of a limited partner in a limited partnership is generally limited solely to that person's investment or contribution to the limited partnership. In addition, a limited partnership can obtain limited liability for its general partners by registering as a limited liability partnership.

Unless special circumstances apply, a shareholder's liability is limited solely by the shareholder's investment in the corporation.

Generally, the liability of a member in a limited liability company is limited solely to the member's investment in the limited liability company.

Income Taxes

All income of a sole proprietorship is taxed on the sole proprietor's own personal income tax return at the appropriate individual tax rates.

A partnership must prepare an income tax return but the partnership pays no income taxes itself. The partnership income tax return acts as a conduit of income to the individual partners. The partnership return apportions the income (or loss) among the partners or limited partners. Each partner or limited partner then includes his or her portion of the income (or loss) on his or her personal income tax return.

Since a corporation is considered a separate person, the corporation prepares its own income tax return and pays income tax on its income. Any distribution of income as dividends to the shareholders is also taxed on a shareholder's individual personal income tax return. The income tax rate for the corporation may be very different from the individual personal rate. A subchapter S corporation is treated similarly to a partnership for income tax purposes; however, a limited liability company can elect to be taxed as a corporation, and a single-member limited liability company is generally taxed the same as a sole proprietorship. The income taxation of a non-profit corporation is separate and very complicated.

If a limited liability company complies with technical and complex income tax rules, the income earned by the limited liability company is taxed as the income from a partnership.

Funding

When obtaining funds from third parties, a sole proprietorship is generally limited to borrowing money, usually from a bank.

A partnership can seek additional investment from loans or it can solicit additional partners (or limited liability partners) who may contribute additional funds.

A corporation has more opportunities for seeking investment. It can borrow money, seek additional investors to purchase either common or preferred stock, or issue other corporate securities such as corporate bonds.

A limited liability company can obtain additional funds similar to a partnership.

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DISABILITY DISCRIMINATION IN EMPLOYMENT: RIGHTS AND RESPONSIBILITIES UNDER FEDERAL AND STATE LAW

Overview

While the Americans with Disabilities of Act of 1990 (ADA) is the best known of the legislative efforts to protect the rights of people with disabilities in the workplace, the ADA is not the only statutory law on the subject. At the federal level, the ADA was amended and clarified by Congress through the Americans with Disabilities Amendments Act of 2008 (ADAAA). At the state level, Missouri's workers with disabilities enjoy the protections of the Missouri Human Rights Act (MHRA), which are sometimes similar but not necessarily identical to federal law and which may afford greater legal protections. Thus, employers and employees alike are well-advised to consider both federal and state law when assessing their duties and rights under current disability law.

Employers: Who Is Subject to Disability Laws?

Federal

Generally, the provisions of the federal ADA Title I apply to both public and private employers with 15 or more employees (as of 1994). The ADA applies to religious entities and corporations as well as private and public employers.

State

The provisions of the MHRA extend to private employers, labor unions, employment agencies, state and local governmental agencies and political subdivisions. Under the MHRA, employers must employ six or more employees. The MHRA also includes as employers individuals who are acting on behalf of an employer. The MHRA contains an exception for religious and sectarian organizations and corporations owned by such organizations.

Employees: Who Is Considered Disabled for Purposes of Disability Laws?

Both federal and state laws contain a three-prong structure for defining

a disability. With respect to an individual, the term disability means: (1) actually having a physical or mental impairment that substantially limits one or more major life activities of such individual; (2) a record of having such an impairment; or (3) being regarded as having such an impairment.

What Does It Mean to Actually Have a Physical or Mental Impairment?

Under federal and state law, a physical or mental impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine. The laws also cover any mental or psychological disorder, such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

What Does It Mean to Be "Regarded as Having" an Impairment?

Federal

An individual can establish coverage under the "regarded as" prong by showing that he/she was subjected to an action prohibited by the ADA based on an actual or perceived impairment, regardless of whether the impairment limits a major life activity.

State

Under the MHRA, being regarded as having an impairment means the person: (1) has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer or others as constituting such a limitation; or (2) does not have a classified impairment but is treated by an employer or by others as having an impairment that substantially limits a major life activity.

What Does It Mean to "Have a Record" of an Impairment?

Federal

Under federal law, this provision is intended to ensure that people are not discriminated against because of a history of disability or because they have been misclassified as having a substantially limiting impairment.

State

Under Missouri law, having a record of such impairment means a person has a history of, or has been misclassified as, having a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation.

What is a Major Life Activity?

Federal

Under current federal law, a major life activity is an activity of central importance to the daily lives of most people. The ADAAA offers a non-exhaustive list of major life activities, such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, sitting, reaching, lifting, bending, speaking, breathing, thinking, interacting with others, working, learning and concentrating. Also, major life activities include "major bodily functions," such as the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The ADAAA clarifies that impairments that are episodic or in remission are considered disabilities "if" the impairment would substantially limit a major life activity when the condition is considered in its active state.

State

Under the MHRA, major life activities are those life activities that affect employability, such as communication, ambulation, self-care, socialization, education, vocational training, employment and transportation.

What Is a Discriminatory Employment Action Under Federal and State Law?

There are many actions that can qualify as a discriminatory employment action. Under federal law, qualified applicants and employees with disabilities are protected from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide reasonable accommodations to qualified applicants that do not impose undue hardship. Under state law, it is an unlawful employment action for an employer to use an individual's status as a disabled person: (1) to refuse to interview, hire or promote; (2) to discharge or demote; (3) to

withhold pay or terms, privileges, or conditions of employment due; or (4) to refuse to provide reasonable accommodations to the known disabilities of the applicant or employee.

What Sorts of Accommodations Must an Employer Provide?

Under both federal and state law, employers are required to make reasonable accommodation to the known limitations of an employee with a disability or applicant for employment. An accommodation may include making facilities readily accessible to and usable by persons with disabilities, and job restructuring, part-time or modified work schedules, acquisition or modification of equipment, and the provision of readers or interpreters and other similar actions.

Exception: What Is an "Essential Function of the Job"?

Neither federal nor state law requires employers to provide accommodations to disabled individuals who are incapable of performing the essential functions of the job. In general, essential functions of the job are duties that an employee must be able to perform on their own or with the help of a reasonable accommodation. An employer cannot refuse to hire an individual because a disability prevents him/her from performing duties that are not essential to the job.

What Is a "Reasonable Accommodation"?

Federal

Under the ADA, a reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

State

Under the MHRA, reasonable accommodation means an employer shall make reasonable accommodation to the known limitations of a handicapped employee or applicant. An accommodation may include: (1) making facilities used by employees readily accessible to handicapped persons; and (2) job restructuring, part-time or modified work schedules, or other accom-

modations in the workplace. To determine whether an accommodation is reasonable, factors to be considered may include: (1) nature and cost of the accommodation needed; (2) size and nature of a business, including the number and type of facilities; (3) good faith efforts previously made to accommodate similar disabilities; and (4) ownership interest in the subject of the proposed accommodation, including the authority to make the accommodation under terms of a bona fide agreement, such as a lease.

Special Cases: Are There Any Protections for Those Addicted to Drugs or Alcohol?

Federal

The ADA excludes coverage from a person who currently engages in the illegal use of drugs. However, the ADA provides that a person no longer engaging in the use of illegal drugs may qualify as an individual with disability if he/she: (1) successfully completed a supervised drug rehabilitation program; or (2) has participated in a supervised rehabilitation program.

State

The MHRA also excludes from coverage a person who is illegally using drugs. However, the MHRA does protect those who: (1) have successfully completed a supervised drug rehabilitation program; (2) have participated in a supervised rehabilitation program; or (3) have been erroneously regarded as currently illegally using or being addicted to a controlled substance.

Pre-Employment Screening: What Types of Questions and Testing May Employers Legally Ask and Impose?

Federal

Under the ADA, it is unlawful to: (1) use employment tests to screen out an individual with disabilities unless the test is shown to be job-related and consistent with business necessity; (2) fail to select and administer employment tests in the most effective manner to ensure that test results accurately reflect the skills, aptitude, or other factors that the test measures; and (3) fail to make reasonable accommodations, including in the administration of tests, unless such accommodation would impose an undue hardship.

State

Under the MHRA, an employer shall not make use of any employment test that screens out persons with disabilities unless: (1) the test score is shown

to be job-related for the position in question; and (2) alternative job-related tests that do not screen out as many persons with disabilities are shown to be unavailable. An employer shall select tests concerning employment to ensure that, when administered to the applicant or employee who has a disability that impairs sensory, manual, reading or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the tests measure rather than reflecting the applicant's or employee's impaired sensory, manual, reading or speaking skills, except where those skills are the factors that the test purports to measure.

Are There Any Other Obligations Imposed on Employers?

Under the ADA and MHRA, employers are required to post a notice in an accessible format to applicants, employees and members of labor organizations describing the provisions of the act. EEOC will provide employers with a poster summarizing these and other federal non-discrimination policies and requirements. EEOC also provides guidance on making this information available in accessible formats for people with disabilities.

How Does an Employee or Applicant Who Believes That He/She Has Been Discriminated Against File a Complaint?

Federal

Complainants must file a complaint or "charge" of discrimination with the EEOC within 180 days of the alleged discrimination. Individuals in Missouri have up to 300 days to file a charge because there is a state law, the MHRA, that provides relief for discrimination on the basis of disability. The federal government encourages complainants to resolve differences through alternative dispute mechanisms such as mediation. If alternate dispute mechanisms fail, the federal agency will issue a "right to sue" letter or, in some cases, will file suit. Individuals may file a lawsuit in federal or state court only after they receive a "right-to-sue" letter from the EEOC. Individuals may file a charge of discrimination on the basis of disability by contacting any EEOC field office, located in cities throughout the United States. You are entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. For information and instructions on reaching your local office, call:

- (800) 669-4000 (Voice)
- (800) 669-6820 (TDD)

State

Under the MHRA, persons who believe they have been discriminated against because of a disability must file a charge of discrimination with the Missouri Commission on Human Rights (MCHR). A signed complaint must be filed within 180 days of the latest date of discrimination. For assistance in filing charges of discrimination, contact MCHR at:

- (877) 781-4236 (Voice)
- (800) 735-2466 (Relay)
- (800) 735-2966 (TDD)

Key Changes Made to the ADA by the ADAAA

The 2008 ADAAA differs from the ADA by:

1. Making it clear that Congress intended the ADA to require a less demanding standard in defining who is an individual with a qualified disability;
2. Construing the ADA to favor a standard of broad coverage to the maximum extent permitted by the terms of the act;
3. Clarifying that mitigating measures should not be a consideration in determining whether an individual has an impairment that substantially limits a major life activity; and
4. Expanding the list of major life activities that are indicative of having a disability.

Other Resources

Federal law: http://www.ada.gov
http://www.eeoc.gov

State law: http://www.labor.mo.gov/mohumanrights

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YOUR RIGHTS UNDER THE MISSOURI WORKERS' COMPENSATION LAW

What is the Workers' Compensation Law?

The workers' compensation law, found in Chapter 287 of the Revised Statutes of Missouri, controls the rights and obligations of employees and employers when employees sustain an accident or occupational disease in the course and scope of their employment.

Who is Covered by Workers' Compensation?

Any employer with five or more employees, and all employers in the construction industry, are required to provide protection for their employees under the Missouri Workers' Compensation Law. Most employers do this by purchasing workers' compensation insurance. Some employers gain approval to self-insure their workers' compensation liability. If your employer has five or more employees, or if your employer is in the construction industry and has even one employee, it is required to either obtain insurance coverage or become authorized as a self-insured. If you do not know whether your employer has workers' compensation coverage, you may obtain this information from the Missouri Division of Insurance or the Missouri Division of Workers' Compensation. You may wish to consult an attorney.

I Was Injured at Work. What Should I Do?

Promptly report your injury to your supervisor. Missouri law section 287.420 requires that you give written notice of the time, place and manner of the injury within 30 days. The name and address of the injured person must also be included. There are some exceptions to this rule. You may wish to consult an attorney. Further, if your problem is due to a repetitive or overuse injury (such as carpal tunnel) or some other illness due to work, notify your employer in writing within 30 days of when you become aware of the problem.

How Do I Get Medical Treatment For My Injury?

Tell your employer that you need medical care for your work injury. Your employer has the right to select the treating doctors. If you are not satisfied with the doctor your employer selects, you may choose your own doctor

at any time during your claim at your own expense. Your regular health insurance usually *will not pay* for work-related treatment. Further, if you use Medicare, Medicaid or veterans' benefits to treat a work-related injury, they may take some or all of your settlement money to recover what they spent.

It is possible for an employer to forfeit its right to select medical providers in certain circumstances. One example is if your employer refuses to send you to the doctor. You may want to consult with an attorney.

Will I Be Paid When I Am Off Work?

If the authorized treating doctor certifies that you are unable to work, or places you on temporary restrictions that make it impossible to work in the open labor market, you will receive, tax free, two-thirds of your average weekly gross wage for the time you are unable to work. This is called "temporary total disability," or TTD. If an *unauthorized* doctor certifies you are unable to work, you may or may not receive TTD.

If you are unable to work, you will not be paid for the first three regularly scheduled workdays after your injury, the so-called "waiting period." If you remain off work for two weeks, the three-day waiting period will then be paid.

This rule has many complicated exceptions. One example is if a doctor places you on light duty. Your employer may or may not have work available within your light duty restrictions. If they do not have light duty work available, you may be entitled to temporary total disability benefits.

If you can work while being treated for your injury, but make less money due to fewer hours or lower pay, you will receive "temporary *partial* disability," a lesser amount than TTD.

If the employer fires you for misconduct committed *after* the injury, you may not be entitled to any TTD. You may also lose some of your temporary total disability benefits as a penalty if you fail a drug screen or violate a safety policy.

You cannot collect TTD for any time you collect unemployment benefits.

If you have any questions about whether you are entitled to TTD or TPD benefits, or subject to a penalty, consult an attorney.

How Much Will My Weekly Lost Time Check Be?

The basic rule is this: you are paid, tax-free, two-thirds of your average weekly gross wage (up to a maximum set by law) based on the 13 weeks of earnings leading up to the work injury. However, this rule does not always apply.

There are special rules for part-time workers, minors, individuals working two jobs, salaried workers, new hires, apprentices, underage workers and employees with absences *before* the injury.

If you believe your average weekly wage was incorrectly calculated, you may want to consult with an attorney.

Will I Be Paid Mileage For My Trips to the Doctor?

You are entitled to "all necessary and reasonable expenses" for medical care if you treat "outside the local or metropolitan area from [your] principal place of employment." The law does not define "metropolitan area." Many judges use a 25-30 mile roundtrip as a guide. "Expenses" include mileage to and from doctor appointments at a rate determined by statute.

If you live out of state and worked for a Missouri employer, different rules apply.

Will I Get a Settlement?

If you are able to return to work after your injury, you may be entitled to a settlement as payment for your "permanent partial disability." The amount that you will receive for your permanent injury depends on the extent of your disability. Your disability may be evaluated by doctors or other experts. The amount of the settlement will vary depending upon several factors, including the disability ratings from the doctors, your average weekly wage, and the date of your accident. Doctors often disagree regarding the percentage of permanent partial disability in any given case. The amount of your permanent partial disability, if any, probably cannot be determined until you have completed your medical treatment.

How Much Will My Settlement Be?

There are *no standard settlement amounts* for injuries. No list or chart can tell you what your case is worth. Each case is different.

This is a partial list of factors that go into computing workers' compensation settlements:

- part of body (some are more valuable than others)
- pre-injury earnings
- date of injury
- pre-existing injuries
- drug or alcohol penalties
- employee's age

- safety penalties
- diagnosis and how well you recovered
- amount of treatment and lost time
- whether you were able to return to your former job duties
- permanent problems and limitations
- future medical care or medicine
- whether you had surgery, broken bones, torn tissues, etc.
- doctors' opinions, both the company doctor and your own
- partial or total disability
- Second Injury Fund, Medicare, Medicaid, unemployment, child support, medical liens, or other outside interests

A judge does not represent either party and cannot advise an employee to accept or reject a settlement offer. The law requires that the insurance company have an attorney. The employee is not required to have an attorney but may wish to retain one. Evaluating settlements requires knowledge and experience. An injured employee probably cannot determine a case's value without a lawyer's advice. The employer/insurer's attorney is the employee's opponent and cannot give the employee legal advice. Only an attorney representing your interests can help you determine the case's value.

Will My Settlement Be Limited to the Company Doctor's Rating?

The company doctor does not control the amount of your settlement. Any doctor's rating (yours or the employer's selected doctor) is merely one opinion to be considered along with the rest of the evidence in the case.

Are Occupational Diseases Covered?

The law intends that work-related occupational diseases, such as lung illnesses, skin problems, carpal tunnel and other overuse injuries, and all other work-related illnesses be covered if your working conditions were the primary cause. You should report such an illness or injury to your employer within 30 days of receiving a diagnosis and ask for testing and treatment.

In addition, workers' compensation may not be your exclusive remedy. You may be entitled to pursue other legal actions. You may want to consult with an attorney for consideration of other options.

Will I Be Paid for Scars or Disfigurement?

Yes, if visible on your head, neck, arms or hands. The amount is based upon the severity of the scarring.

What If I Can't Return to Work?

If you are permanently and totally disabled from *all* types of employment due to your work injury, or due to your work injury in combination with pre-existing injuries or illnesses, you may qualify for a weekly, tax-free check for life. These are "permanent, total disability" benefits, and will be the same amount as your TTD (lost time) checks.

If you are totally disabled under workers' compensation, you may also be totally disabled under Social Security. Promptly apply for those benefits. An injured worker who is eligible for SSD benefits should consult with an attorney to avoid an offset with workers' compensation benefits.

What is the Second Injury Fund?

If you had a physical or mental disability before you got hurt at work, the Second Injury Fund may owe you additional benefits, either as a lump sum or as a weekly check for life.

The Second Injury Fund also pays for medical treatment if an employer did not have the required workers' compensation insurance. It may also pay money if an injured employee lost out on wages at a second job due to injury at his first job.

Second Injury Fund obligations are complicated, and an injured employee must file a claim within time limits. You may want to consult with an attorney.

What is Vocational Rehabilitation?

Vocational rehabilitation services help injured workers return to work through education or retraining. Employers and insurers may offer such services but are not required to do so. If they do, they must pay weekly checks during the rehabilitation process.

Injured employees unable to return to work may also qualify for assistance from the Missouri Division of Vocational Rehabilitation, which is not related to the Division of Workers' Compensation. You may contact the Missouri Division of Vocational Rehabilitation at 3024 Dupont Circle, Jefferson City, MO 65109, (573) 751-3251.

When Is the Deadline to File a Claim?

Telling your employer that you were hurt on the job, or even filling out an incident report, is not the same as filing a claim.

A written claim for an on-the-job injury must be filed with the Division of Workers' Compensation within two years of the latest of these: a) date of accident; b) date of last payment of money benefits; c) date of last payment for medical treatment for the work injury. This is known as the statute of limitations and is separate from the 30-day "notice" requirement discussed earlier. Filing a claim may not be necessary to receive benefits, (i.e., the employer and insurer may volunteer to pay some or all of your benefits), but once the statute of limitations passes, you will not be allowed to file a claim to enforce your rights. The Missouri Division of Workers' Compensation provides a form to file such claims.

An exception may extend the two-year deadline. If the employer did not file the required "report of injury" form with the Division of Workers' Compensation on time, the injured employee's deadline changes to three years.

Second Injury Fund claims must be filed within two years of the accident date or within one year after filing a claim against the employer, whichever is later.

There are other exceptions to these rules, especially regarding occupational illnesses and repetitive injuries. Even if you believe the time limits for filing a claim have passed, you should consult an attorney.

What Happens If My Employer Has No WC Insurance?

If the employer has five or more employees or is in the construction industry, it is subject to civil and criminal penalties, and you may report them to the Fraud and Non-compliance Unit at (800) 592-0063. The employee may elect to seek benefits under workers' compensation or pursue an action in civil courts.

The Second Injury Fund may pay for necessary medical care if the employee elects to pursue workers' compensation benefits.

Which State's Laws Apply?

Missouri law will apply if: a) you were injured in Missouri, or b) you were hired in Missouri, or c) your work was principally done in Missouri.

More than one state's law can apply to the same case at the same time. For example, it is possible to have Missouri and Illinois cases at the same time for the same injury. Your rights and responsibilities vary from state to state.

Do I Need a Lawyer?

You are not required to have a lawyer. But the employer and insurer must have one, and the workers' compensation judges and staff do not represent your interests, cannot give you legal advice, and are not allowed to tell you if a settlement offer is fair. In addition, the employer's/insurer's attorney is your opponent and cannot give you legal advice. A lawyer who represents your interests can answer your questions and, if necessary, take your case to mediation or trial.

A workers' compensation case is a legal matter that may affect the rest of your life. Although originally designed to be a simple, no-fault system, the law has been changed many times and has become complicated. Besides the complexity of the workers' compensation law itself, other areas of law are now involved, such as Medicare, Medicaid, unemployment, medical malpractice, products liability, OSHA, ERISA, ADA, COBRA, HIPAA, discrimination, divorce, veterans' benefits, health insurance, privacy, collective bargaining agreements, short-term and long-term disability, Social Security and wrongful firing. Decisions you make on your workers' compensation case may affect those rights as well.

What Will a Lawyer Cost?

Most lawyers provide free initial consultation, ask for no retainer fee, and are paid a contingency fee, usually 25 percent of what they recover for you. The judge must approve all fees. If the case is lost, there is no fee. Most lawyers will advance the costs of litigation, including a medical evaluation, then recoup the expenses at the end of the case.