

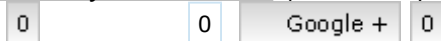
New Missouri Supreme Court Decision Addresses Untimely Claims

Published Date: September 5, 2013

Author: [Rodney A. Harrison](#) (St. Louis)

Published Date: September 5, 2013

Author: [Rodney A. Harrison](#) (St. Louis)



Published Date: September 5, 2013

On August 27, 2013, the Missouri Supreme Court issued its decision in *Farrow v. St. Francis Medical Center* (No. SC 92793), which fundamentally alters the manner in which employers must address untimely claims under the Missouri Human Rights Act.

Farrow involved claims by a former employee of St. Francis Medical Center, who claimed she was subjected to sexual harassment in December 2005, and February 2006, followed by numerous acts of retaliation through and including her termination on December 10, 2008. On July 27, 2009, Madonna Farrow filed a complaint with the Missouri Commission on Human Rights (MCHR) raising these claims. On December 19, 2009, the MCHR issued Farrow a right-to-sue letter, and on March 18, 2010, Farrow filed a complaint in Missouri state court alleging, among other claims, that she had been sexually harassed and retaliated against in violation of state law.

Consistent with long-standing Missouri precedent and because the alleged unlawful practices (including her discharge) all occurred more than 180 days before Farrow filed her charge, the trial court dismissed her claims. Although the MCHR, like the Equal Employment Opportunity Commission (EEOC), has historically issued right-to-sue letters whether a charge is timely or not, Farrow appealed arguing that the MCHR found that the charge was timely when it issued the right-to-sue letter, and the defendants could not challenge that finding for the first time in a lawsuit.

In a shocking departure from precedent, the Missouri Supreme Court agreed and found that the issuance of the right-to-sue letter meant the MCHR had implicitly found Farrow's claim was timely. Moreover, the court concluded that if the defendants had wished to challenge the timeliness of Farrow's filing before the MCHR, they had an obligation to do so before the issuance of the right-to-sue letter (that is, convince the MCHR not to issue a right-to-sue letter and dismiss the charge). Alternatively, the defendants could have sought relief pursuant to Mo. Stat. Ann. § 213.085.2, which allows any person to obtain judicial review of a final decision of the MCHR within 30 days of that decision.

The implications of *Farrow* are far reaching. When an employer receives a charge of discrimination that is filed more than 180 days after the alleged unlawful act, the employer must make a prompt decision on how to respond. Based on *Farrow*, it would seem that there are two equally viable routes.

First, an employer could submit a letter to the MCHR requesting that the charge be dismissed for lack of jurisdiction because the charge was not timely filed. An employer would need to take this action even if the charge is assigned to the EEOC for investigation, and the charge is timely under the 300-day period applicable under federal laws. As all charges in Missouri are dual-filed with the EEOC and MCHR, an employer risks finding itself in the same position as St. Francis Medical Center if it waits for the EEOC to respond. If the MCHR ignores the request for dismissal and issues a right-to-sue letter, an employer would need to immediately seek review through a writ of mandamus proceeding pursuant to Mo. Stat. Ann. § 213.085.2. This is the route outlined by the Missouri Supreme Court in *Farrow*.

Second, upon receipt of a charge based on alleged unlawful conduct that occurred more than 180 days before the filing of the charge, an employer could file a writ of prohibition in the county in which the employee worked or in Cole County, Missouri, seeking an order preventing the MCHR from issuing a right-to-sue letter. While more aggressive, the plaintiffs' bar could begin filing suit immediately upon receipt of a right-to-sue letter. Accordingly, by the time an employer sought review of the issuance of the right-to-sue letter, a lawsuit could already be underway. At that point, given the holding of *Farrow*, it is not clear there is much a court could do.

Note: This article was published in the September 5, 2013 issue of *The Missouri eAuthority*.

Posting and viewing of the information on this website is not intended to constitute legal advice or create an attorney-client relationship.

Privacy & Cookie Policy Disclaimer © [site-date-yyyy], Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All rights reserved.

Source URL: <http://www.ogletreedeakins.com/publications/2013-09-05/new-missouri-supreme-court-decision-addresses-untimely-claims>