

# Human Rights Act Attorney Fee Awards Warning to Missouri Employers

AUTHOR: SANDBERG PHOENIX

On September 23, 2014, the Missouri Courts of Appeals ruled that a plaintiff who prevails under the Missouri Human Rights Act cannot have the award of attorney fees arbitrarily reduced based on the amount of damages awarded.

The Plaintiff, a truck driver, brought a claim of constructive discharge accusing his employer of refusing to accommodate his disability and subjecting him to increased disciplinary write-ups. While the jury found the in favor of the Plaintiff, it awarded him only \$7,500. As a prevailing party, Plaintiff sought \$133,198 in attorney fees. The Court of Appeals noted that while a trial court has discretion to determine the amount of reasonable attorney fees, the following factors need to be considered:[text\_box]

- the rates customarily charged by the attorneys involved in the case and by other attorneys in the community for similar services;
- the number of hours reasonably expended on the litigation;
- the nature and character of the services rendered;
- the degree of professional ability required;
- the nature and importance of the subject matter;
- the amount involved or the result obtained; and
- the vigor of the opposition.

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While, the “most critical factor is the degree of success obtained,” it was improper for the trial court to reduce fees when the damages are small in order to maintain proportionality between the damages and the fees awarded.

In this case, the trial court erred in reducing the attorney fees by 30% (to \$87,200.75) on the notion that such an award works against the public policy of encouraging settlement. The Court noted that the trial court's focus on the "small degree of success in terms of damages" failed to consider the nature and importance of Plaintiff's success in proving discrimination, regardless of the monetary amount of actual damages.

This case is significant to employers as they weigh how to respond to lawsuits and threats of litigation since Missouri trial courts have been reminded that while all civil rights claims are not considered of equal importance, even small verdicts under the Act might reflect a "high degree of success" which can justify a significant award of attorney fees.

By Geri Lynn Arrindell

Geri Lynn Arrindell type unknown

*Dewalt v. Davidson Surface Air, et al.*, No. ED 101245, Missouri Court of Appeal Eastern District, September 23, 2014.