



Thompson Coburn LLP | One US Bank Plaza | St. Louis, MO 63101

## **Missouri Employers Take Note: Don't Wait to Challenge the Timeliness of a Charge Under the Missouri Human Rights Act**

The Missouri Supreme Court's August 27, 2013, decision in *Farrow v. Saint Francis Medical Center* provided a stunning result in a case presenting a common fact pattern. Farrow filed a charge of discrimination more than 180 days and less than 300 days after her discharge. Therefore, the charge was timely under Title VII, but untimely under the Missouri Human Rights Act. The EEOC was assigned to investigate the charge and it eventually issued a right to sue notice. As is its custom, the Missouri Commission on Human Rights issued a right to sue shortly after it learned of the EEOC's dismissal of the charge. When Farrow sued under the MHRA, the defendants moved for dismissal, arguing that her underlying discrimination charge was untimely. The circuit court granted the motion.

On appeal, the Missouri Supreme Court reversed. It held that employees who file untimely MHRA charges may pursue MHRA lawsuits so long as they receive right to sue notices from the MCHR and file their suits within 90 days of receipt of those notices. The Court found that the MCHR does not have jurisdiction over untimely charges and therefore does not have the authority to issue right to sue notices based on such charges. However, by waiting until the discrimination case was pending in court, the defendants had waived this defense. Instead, the Court held that the company had to challenge the timeliness of the charge either prior to the issuance of the right to sue notice and/or by filing a lawsuit against the MCHR after its issuance of the right to sue notice.

To access the Missouri Supreme Court's decision, click [here](#).

### **Take Away**

The surprising result is that *Farrow* is clearly different than well-settled law under the federal anti-discrimination statutes. Missouri employers will want to immediately challenge the timeliness of the MHRA charge, while it is pending, by asserting that the MCHR lacks jurisdiction and should dismiss the charge without the issuance of a right to sue notice. If the MCHR issues a notice of right to sue on an untimely

charge, employers should immediately seek a writ of mandamus challenging the MCHR's jurisdiction to have issued the notice of right to sue. In addition to checking the timeliness of new charges, we suggest that Missouri employers check all pending charges to ensure that none of them require the prompt action required under *Farrow*.

Thompson Coburn will continue to keep you advised of any developments. If you have questions regarding the above-referenced decision, or other labor or employment issues, please contact a member of Thompson Coburn's Labor and Employment Group.

Hope K. Abramov	314-552-6496	habramov@thompsoncoburn.com
Michael W. Duffee	312-580-2218	mduffee@thompsoncoburn.com
Clifford A. Godiner	314-552-6433	cgodiner@thompsoncoburn.com
Laura M. Jordan	314-552-6469	ljordan@thompsoncoburn.com
Susan M. Lorenc	312-580-2324	slorenc@thompsoncoburn.com
Krissa P. Lubben	314-552-6389	klubben@thompsoncoburn.com
Charles M. Poplstein	314-552-6095	cpoplstein@thompsoncoburn.com
Joyce M. Pratt	314-552-6319	jpratt@thompsoncoburn.com
Timothy J. Sarsfield	314-552-6432	tsarsfield@thompsoncoburn.com
Arthur B. Sternberg	312-580-2235	asternberg@thompsoncoburn.com

Thompson Coburn LLP  
Chicago | St. Louis | Southern Illinois | Washington, D.C.  
[www.thompsoncoburn.com](http://www.thompsoncoburn.com)

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