



CHARTERED
ATTORNEYS AT LAW

March 10, 2009

TO ALL INTERESTED COMPANIES

Re: Missouri Alliance for Retired Americans v. Department of Labor /
Division of Workers Compensation

Dear Friends:

A little over a week ago, the Missouri Supreme Court handed down its long awaited decision in a case resulting from suits brought by various organized labor unions and labor related groups and supported by large numbers of the plaintiffs' bar. This suit had challenged the very constitutionality of the Missouri Legislature's changes to the Missouri Workers Compensation Law, which went into effect August 28, 2005. You and I have referred to these changes many times as the "new law."

By the next day, what can only be called reactionary and alarmist email correspondence was flooding many of your inboxes. Some even supported their reactionary statements with quotes from the plaintiffs' bar and plaintiffs' attorney organizations' own email Listservs. Frankly, those are probably two of the least, shall we say, reliable, places to look for anything other than vitriolic hatred of employers and their insurers. All one has to do to see that is look at the postings on the trial lawyers' Listservs in Missouri or Kansas to know this. We have friends who reacted in a similar fashion. I utterly and wholeheartedly disagree with the content of many of those emails and messages. I can most fairly characterize them as alarmist attempts to instill panic - appropriate, or at least commonplace, among politicians but not appropriate for reliance in a legal or probably any other setting. Quotations from plaintiffs' attorneys such as those contained in some of those messages you may have received, such as, "THIS...IS...HUGE," (that actually was put into one of the reactionary email 'alerts' some of you may have received) do nothing toward any good end and are worse than worthless. They are damaging in that they instill panic where there should be none.

The decision is not "huge." In fact, it does literally nothing to change the law of the State of Missouri on the issue in question. As Justice Wolff, who taught at Don's alma mater, St. Louis University School of Law, states in the

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concurring opinion, "as I understand it, the declaratory judgment is: if a worker is injured and the worker is precluded from recovery under the workers compensation law, the injured worker can pursue a tort remedy in court." Ladies and gentlemen, let not your hearts be troubled. This decision changes, for all practical purposes, nothing.

Please rest assured that the sky is not falling and has not fallen. The law today is essentially the same as it was the second before this decision was handed down. If a person's injury occurs on the job, the claimant cannot sue the employer if a remedy is available in workers' compensation, as the Missouri Workers Compensation Law did and still does "supplant common law in determining remedies for on-the-job injuries." Missouri Alliance for Retired Americans, et al v. Department of Labor and Industrial Relations, SC88368 (2009) quoting State ex rel. MW Builders, Inc. v. Midkiff, 222 S.W.3d 267, 270 (Mo. banc 2007). This has been the law and is still the law. The decision has not changed that.

We have copies of the decision available for your review. We are happy to discuss with any of you, on an individual or group basis, any questions you have regarding this or any aspect of Missouri or Kansas workers compensation law. We will continue to provide you with well-thought out, reasonable, aggressive yet practical advice to make your jobs easier, more secure and, if possible, a little more enjoyable. We would encourage and invite you to contact us should you have any question or need for assistance. We would consider it an honor to speak with you.

Very truly yours,

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