I. INTRODUCTION

A young woman named Sarah arrives at her appointment with an employment attorney in the Kansas City metropolitan area. Her employer, a medium-sized company, is headquartered in Blue Springs, Missouri, but Sarah is one of many salespeople who make sales calls on both sides of the state line. Her territory stretches from Topeka, Kansas, to Richmond, Missouri. Over the past six months, Sarah’s supervisor has become increasingly inappropriate at their monthly meetings. At a meeting three months ago over lunch at Bo Ling’s in Lenexa, Kansas, he asked Sarah to go to a late night concert with him and became enraged when she declined the invitation. Last month, Sarah met the same supervisor for coffee in Kansas City, Missouri, to discuss her month’s sales, and he again asked her to see him socially, threatening a poor review if she did not “lighten up.” She was terminated last week after being written up by this same supervisor for “poor work habits and a lack of interpersonal skills.” She is consulting an attorney for advice on how to proceed in either getting her job back or suing her former employer for discrimination.1 Because discriminatory acts occurred in both Missouri and Kansas, claims can potentially be filed in either state.

An employment lawyer faces the challenge of conducting a multi-pronged analysis before taking a case. After determining the merits of a claim and possible venues, she must analyze the most advantageous place to file charges of discrimination, a form that must precede the filing of any lawsuit. Once a practitioner commits to a course of action by filing charges of discrimination, the venue for the lawsuit will be established. This comment will focus on the differences between the various courts, federal and state, in Missouri and Kansas when filing a discrimination lawsuit under Title VII of the Civil Rights Act or the respective state acts.2 Part II considers which venues are

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1 Hypothetical case representing common factual scenario facing attorneys on the border of Kansas and Missouri.
2 The Comment will focus in Title VII of The Civil Rights Act of 1964, as amended in 1991 (known as Title VII) and the equivalent state protections under the state acts for the same protected classes.
available to a client based on timing and location of discriminatory acts and analyzes the applicability of Title VII, the Missouri Human Rights Act, and the Kansas Act Against Discrimination. Part III considers the forum and remedies available under these three statutes. Finally, Part IV distills all of these factors into options most likely to benefit a victim of workplace discrimination which occurs across the border of Kansas and Missouri.

II. The Filing of Charges of Discrimination

A victim of workplace discrimination has limited timeframes within which to bring forward her claims of discrimination or retaliation. Under the federal scheme, a victim must file charges of discrimination with the Equal Employment Opportunity Commission (EEOC) within 300 days of the discriminatory or retaliatory acts. Under the state schemes, a victim must file charges of discrimination within 180 days of the discriminatory or retaliatory acts. In states like Missouri and Kansas that have their own anti-discrimination statutes, filing charges of discrimination with the EEOC within the 180 days mandated by the state acts will trigger protections under both Title VII and the respective state act.

A. When Title VII Is Applicable

Title VII makes it unlawful for an employer to refuse to hire or otherwise discriminate against any individual with respect to his “compensation, terms, conditions, or privileges of employment” because of a person’s race, color, sex, religion, or national origin. Title VII defines “Employers” as an entity that employs fifteen or more employees for twenty or more weeks in a calendar year.

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3 The 300 day filing requirement is under all of the federal employment statutes including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981 (2012); The Americans with Disabilities Act of 1990, 42 U.S.C. § 12100 (2012); The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 (2012); and The Equal Pay Act of 1963, 29 U.S.C. § 201 (2012). See also TIME LIMITS FOR FILING A CHARGE, EEOC, http://www.eeoc.gov/employees/timeliness.cfm (stating “The anti-discrimination laws give you a limited amount of time to file a charge of discrimination. In general, you need to file a charge within 180 calendar days from the day the discrimination took place. The 180 calendar day filing deadline is extended to 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis. The rules are slightly different for age discrimination. For age discrimination, the filing deadline is only extended to 300 days if there is a state law prohibiting age discrimination in employment and a state agency or authority enforcing that law. The deadline is not extended if only a local law prohibits age discrimination").

4 In Missouri, the Missouri Human Rights Act, MO. REV. STAT. § 213 (2012) (the 180 day requirement may be found in MO. REV. STAT. § 213.075(1) (2013)). In Kansas, the Kansas Acts Against Discrimination, KAN. STAT. ANN. §§ 44-1001 to 44-1044 (2009) (Kansas has a six month requirement that can be found in KAN. STAT. ANN § 44-1005(i) (2009)).


B. When the Missouri Human Rights Act Is Applicable

The Missouri Human Rights Act makes it unlawful for an employer to refuse to hire or otherwise discriminate against any individual because of “race, color, religion, national origin, sex, ancestry, age or disability”. The Missouri Human Rights Act defines “Employer” as an entity that employs six or more persons within the state.

C. When the Kansas Act Against Discrimination Is Applicable

The Kansas Act Against Discrimination makes it unlawful to refuse to hire, to discharge or to otherwise discriminate against a person because of “race, religion, color, sex, disability, national origin or ancestry.” The Kansas Act Against Discrimination defines an “Employer” as a person in the state employing four or more employees.

D. Determination of Available Venues

Determination of available venues is the first decision for an employee who has been subjected to harassment or discrimination. First, the employer must have enough employees for the applicable statute to be in effect, such as the required four employees in Kansas or six in Missouri. Title VII requires more than double those numbers of employees, so very small business are not subject to federal claims. Once employer size has been satisfied, timing must be evaluated. If a client has come to the attorney’s office prior to the expiration of the 180 days to file a state claim, the client may file with the state agency and the EEOC. If the time frame from the last discriminatory or retaliatory act is more than 180 days but less than 300 days, the client will be forced to file with the EEOC. If the last act of discrimination or retaliation is beyond 300 days, most likely no action may be taken on their behalf.

III. Consideration of the Forum and Remedies Available to an Aggrieved Employee

There are distinctly different remedies available to an employee under Title VII, the Missouri Human Rights Act, and the Kansas Act Against Discrimination. Any analysis of the best agency in which to file requires a complete knowledge of the remedies available under each Act.

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9 MO. REV. STAT. § 213.010(7) (2012). “Employer” does not include corporations and associations owned and operated by religious groups and sectarian groups.
11 KAN. STAT. ANN. § 44-1002(b) (2012).
12 MO. REV. STAT. § 213.010(7) (2012); KAN. STAT. ANN. § 44-1002(b) (2012).
14 A violation may be beyond the 300 day limit, but not discoverable, such as a pay violation which often results in a hidden discrepancy. Those are special circumstances which may result in action being taken beyond the 300 day requirement.
A. Title VII Claims

1. The Forum for a Title VII Claim

At the conclusion of the Equal Employment Opportunity Commission’s investigation, an individual may initiate a lawsuit in the federal district court for the district in which the unlawful employment practice took place or a Title VII case can be filed in state court. As originally written, Title VII provided that the court was the ultimate fact-finder. Further Title VII provided for injunctive relief which specifically included the equitable remedy of back pay relief. Title VII did not provide a statutory right to a jury. Thus, prior to the Civil Rights Act of 1991, the Supreme Court and the majority of lower federal appellate courts held that there was no jury trial right in Title VII cases.

The Civil Rights Act of 1991 (“1991 Act”) created a right to recover compensatory and punitive damages. The 1991 Act also permitted a complaining party seeking compensatory and punitive damages to demand a jury trial. The federal civil rules allow a plaintiff a jury trial if a timely demand is made. The number of jurors in a federal court trial must total no less than 6 and no more than 12, who must reach a unanimous verdict unless the parties stipulate otherwise.

2. Remedies Under Title VII

The Civil Rights Act of 1964 afforded aggrieved employees equitable relief. The Act’s equitable remedies included back pay, front pay and fringe benefits and were called “restitutionary.” In Great American Saving & Loan Association v. Novotny, the Court reaffirmed the prevailing view that the 1964 Act did not allow courts to award general and punitive damages. However, the 1964 Act did allow the prevailing party an award of her reasonable attorneys’ fees.

18 See id. at 374-75; see also 42 U.S.C. § 2000e-5(g) (2012).
19 See Great Am. Sav. & Loan Ass’n, 442 U.S. at 375 (because Title VII expressly authorized only equitable remedies, the courts have consistently held that neither party has a jury trial right) (citing EEOC v. Detroit Edison Co., 515 F.2d 301, 308-10 (6th Cir. 1975); Richerson v. Jones, 551 F.2d 918, 926-28 (3rd Cir. 1977)). See also Chauffers, Teamsters and Helpers, Local No. 391 v. Terry, 494 U.S. 558, 570-71 (1990).
21 42 U.S.C. § 1981a(c)(1) (2012) (also, this analysis applies to disparate treatment, but not disparate impact, cases).
25 Chauffers, Teamsters and Helpers, Local No. 391, 494 U.S. at 570-71.
26 Great Am. Sav. & Loan Ass’n, 442 U.S. at 374-75 (citing EEOC v. Detroit Edison Co., 515 F.2d 301, 308-10 (6th Cir. 1975); Richerson v. Jones, 551 F.2d 918, 926-28 (3rd Cir. 1977)).
The 1991 Act expands the damages available to an employee seeking relief under Title VII. The 1991 Act provides that an aggrieved employee can recover, in addition to the equitable relief, compensatory and punitive damages.\(^{28}\) Compensatory damages include recovery of pecuniary and non-pecuniary losses.\(^{29}\) Pecuniary damages include “moving expenses, job search expenses, medical expenses, psychiatric expenses, physical therapy expenses and other quantifiable out of pocket expenses”.\(^{30}\) Under the 1991 Act, future pecuniary losses are subject to damage caps but past pecuniary losses are not.\(^{31}\) Non-pecuniary damages include intangible injuries such as emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment, injury to professional reputation, injury to standing of credit, and loss of health.\(^{32}\) These injuries may manifest themselves as anxiety, sleeplessness, depression, mental strain, humiliation, and distress, as well as loss of self-esteem, excessive fatigue, or nervous breakdown.\(^{33}\) Punitive damages, the remaining component of damages added under the 1991 Act, are awarded to punish the employer and to “deter future discriminatory conduct.”\(^{34}\)

Using the size of the employer as a guide, the 1991 Act capped the total of the compensatory and punitive damages which could be awarded.\(^{35}\) Damages are capped more dramatically for small employers, but damages caps increase as employer size increases. Assessment of damages against employers with 15 to 100 employees is capped at $50,000.\(^{36}\) Assessment of damages against employers with 101 to 200 employees is capped at $100,000.\(^{37}\) Assessment of damages against larger employers, with between 201 and 500 employees, is capped at $200,000.\(^{38}\) Assessment of damages against the largest employers, those with 501 or more employees, is capped at $300,000.\(^{39}\) The 1991 Act specifically states that the jury shall not be advised of any such limitation.\(^{40}\)

Front pay is an equitable remedy assessed by the court, not a jury.\(^{41}\) As such, front pay is not subject to the statutory limit on compensatory damages under 42 U.S.C. § 1981a(b)(3).\(^{42}\) Because relief available under U.S.C. § 2000e-5(g) is not deemed to be compensatory damages, a complaining party may recover full compensation for back pay, interest on back pay, front pay and any other “make whole” remedy available to her.\(^{43}\) The various remedies under Title VII must be analyzed before determining a federal claim is the best option for an


\(^{31}\) Id.; see infra text accompanying notes 31-36 for an explanation of the damage caps.

\(^{32}\) EEOC, supra note 30.

\(^{33}\) Id.

\(^{34}\) Id.


\(^{41}\) Excel Corp. v. Bosley, 165 F.3d 635, 639 (8th Cir. 1999).


\(^{43}\) See Carter v. Sedgwick County, 929 F.2d 1501, 1505 (10th Cir. 1991).
aggrieved employee who also has a potential state human rights claim in Kansas or Missouri.

B. Claims Under the Missouri Human Rights Act

1. The Venue for Cases Under the Missouri Human Rights Act

An employee seeking a remedy under the Missouri Human Rights Act may file a lawsuit in the circuit or associate circuit court of Missouri in “any county in which the unlawful discriminatory practice” occurred. The lawsuit must be filed within 90 days of the receipt of a letter from the Missouri Human Rights Commission, noticing the employee of her right to file suit. The Act itself does not afford a litigant a jury trial; however, the Missouri Supreme Court has extended the jury trial right to employment discrimination disputes. The number of jurors in a civil trial is twelve. The parties may agree to a lesser amount of jurors but not less than eight. A verdict is valid if agreed to by three quarters of the jurors, typically nine of the twelve jurors.

2. Remedies Under the Missouri Human Right Act

The court may grant the relief it considers appropriate in each case, including injunctive relief and actual and punitive damages. Actual damages typically include lost wages and benefits, front pay, pecuniary and non-pecuniary losses. There is no cap on the amount of actual damages under the Missouri Human Rights Act. Punitive damages may be awarded if the employers’ conduct is considered wanton or willful or recklessly disregards the right of the employee. Punitive damages are capped in Missouri at the greater of $500,000 or 5 times the net amount of the judgment awarded. For purpose of this multiplier, attorneys’ fees awarded are part of the net amount of a judgment.

C. Claims Under the Kansas Act Against Discrimination

1. The Venue for Cases Under the Kansas Act Against Discrimination

An employee suing under the Kansas Act Against Discrimination may initiate a lawsuit in the district court of Kansas or the federal district court for the

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45 Id.
46 State ex rel. Diehl v. O’Malley, 95 S.W.3d 82, 84 (Mo. 2003) (holding that an employee has a right under the Missouri Constitution, art. I, section 22(a) to have a Missouri Human Rights Act claim tried to a jury).
48 Id.
49 MO. REV. STAT. § 213.111(2) (2012).
50 See id.
51 See Howard v. City of Kansas City, 332 S.W.3d 772, 778 (Mo. 2011).
district in which the discrimination or retaliation occurred, but only after her administrative remedies are exhausted by filing a charge of discrimination. The Kansas Act gives a litigant a jury trial provided a timely demand for a jury is made. A litigant has fourteen days to make a timely demand for a jury trial. The panel consists of twelve jurors unless the parties stipulate to a lesser number. For a twelve juror panel to reach a verdict, there must be agreement by ten of the twelve jurors.

2. Remedies Under the Kansas Act Against Discrimination

The Kansas Act Against Discrimination allows for affirmative action incidental to restoring an employee to the employment circumstances that she would have held but for the actions taken by her discriminating employer. Recovery includes back pay, front pay and other out of pocket costs associated with remedying the discrimination. A court may also order an award of “damages for pain, suffering and humiliation which are incidental to the act of discrimination.” The statute does not provide for punitive damages, and any award for pain, suffering and humiliation is limited to the total sum of $2,000.

IV. Where to File and Why

A. Filing in Federal Court in Missouri Versus State Court in Missouri

An employee in Missouri typically would rather file a discrimination lawsuit in state court under the Missouri Human Right Act than federal court with a Title VII claim. Both state and federal court allow for a jury trial, but Missouri does not require a unanimous verdict for damages to be awarded to an aggrieved employee. Also, the Missouri statute provides for more relief than Title VII, although one can bring pendent state claims in federal court. While punitive damages are capped under the Missouri statute, those caps are substantially larger than the caps created by Title VII.

B. Filing in Federal Court in Kansas Versus State Court in Kansas

A Kansas employee who has been discriminated against would probably prefer to file a lawsuit, pursuing a Title VII claim, in federal court than in Kansas.

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54 Van Scoyk v. St. Mary’s Assumption Parochial Sch., 580 P.2d 1315, 1317-18 (1978) (a “No Probable Cause finding” is considered an exhaustion of administrative remedies).
55 KAN. STAT. ANN. § 44-1011(b)(3) (2012); see also Wagher v. Guy’s Foods, Inc., 885 P.2d 1197, 1212 (1994) (stating that [the court] interprets “K.S.A. 44-11011(b)(3) to provide the right to trial with a jury where demand is made as required by K.S.A. 60-238.”)
56 KAN. STAT. ANN. § 60-238(b)-(c) (2012).
57 KAN. STAT. ANN. § 60-248(a) (2012).
58 KAN. STAT. ANN. § 60-248(g) (2012).
59 KAN. STAT. ANN. § 44-1005(k) (2012); see also Wagher, supra note 55, at 1220-21.
60 KAN. STAT. ANN. § 44-1005(k) (2012); see also Wagher, supra note 55, at 1220-21.
62 Id.
state court under the Kansas Act Against Discrimination. The Kansas statute does not allow for punitive damages and greatly limits damages due to pain and suffering. While federal courts under Title VII have limited damage awards, those amounts are nearly certain to be more than those awarded under the Kansas statute if a plaintiff prevails. While federal court has a reputation for being more conservative and pro-business, it is the better forum for a plaintiff with a claim of employment discrimination because of the severe limitations on damages under the Kansas state statute.

V. Conclusion

For employment lawyers practicing in Missouri and Kansas, careful consideration must be made before acting on behalf of an aggrieved employee. If the time from the discriminatory act has not exceeded 180 days, more options are available because suing under a state statute is still possible. For plaintiffs in Missouri, this is fortuitous because Missouri state court is a much more beneficial venue than federal court under the Title VII statute. For a Kansas employee, being within the 180 day window is a small comfort since Kansas state court is a place employee plaintiffs will want to avoid. If the time from the discriminatory act until the charge of discrimination is filed is within the timeframe of 180 and 300 days, little changes for the Kansas litigant, but Missouri employee plaintiffs must now settle for federal court and a Title VII claim. Many decisions are required before litigation even begins for employment attorneys practicing on the border of Missouri and Kansas where discriminatory acts cross state lines.