

Missouri Tort Reform Bill to Narrow Definition of Employee in Medical Negligence Actions

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SB 237 is a bill designed to limit the liability of hospitals and other healthcare providers for the actions or omissions of those who are not within a narrow definition of "employee." SB 237 is designed as a legislative fix for an issue that arose out of the earlier tort-reform legislation from 2005. The 2005 amendments included a limitation on liability for the "actions or omissions of any other entity or person who is not an employee." However, the statute did not define the term "employee," although it did specifically define the term "physician employee" — a term that was not used elsewhere in the statute.

This discrepancy became the focus of attention in the case of *Jefferson ex rel. Jefferson v. Missouri Baptist Med. Ctr.*, 447 S.W.3d 701 (Mo. App. E.D. 2014). In *Jefferson*, the trial court granted summary judgment for defendant Missouri Baptist Medical Center, finding it was not liable for the alleged negligent actions or omissions of a radiologist because the radiologist was not an "employee." In making this finding, the trial court used the statute's definition for "physician employee" to interpret the term "employee." The Court of Appeals reversed, holding that "employee" should instead be defined according to common-law principles of agency and control rather than according to the narrow definition of "physician employee." *Id.* at 711-13. In rendering this decision, however, the Court of Appeals noted that "had the legislature specifically defined the term 'employee,' rather than 'physician employee,' in the definitions section of Chapter 538, we would be bound to apply that definition." *Id.* at 708 n.7.

SB 237 proposes to remedy the discrepancy by repealing the term "physician employee" from the definitions in §538.205 and proposing to add a new term "employee" with the definition of: "any person or entity who either works for a health care provider for compensation paid directly by said health care provider to the person or entity or under a written employment contract between said health care provider and the person or entity." The House Committee in Missouri's House of Representatives has approved a substitute that slightly alters SB 237. It proposes to repeal "physician employee" from the defined terms and creates a new term of "employee" defined as: "any individual who is directly compensated by a health care provider for health care services rendered by such individual." In addition, it also seeks to make changes in §538.210 to state that in causes of action for damages against a health care provider for personal injury or death, the health care provider shall not be liable for the actions of another entity or person who is not an employee of the health care provider. This is currently before the Legislative Oversight Committee.



If you have questions regarding this alert, please contact your Lathrop Gage attorney or the attorneys listed above.