

38.00 [2023 New] General Comment

(Approved June 28, 2022; Effective January 1, 2023)

A. MAI 38.01(A) and (B), 38.02, 38.03, and 38.04 apply to cases accruing prior to August 28, 2017. For actions accruing on or after August 28, 2017, see MAI 38.03 (verdict directing—wrongful discharge in violation of public policy), MAI 38.05 (verdict directing—retaliatory discharge or discrimination), MAI 38.06 (verdict directing—MHRA employment discrimination), MAI 38.07 (verdict directing—disability disputed), MAI 38.08 (affirmative defense—business judgment), MAI 38.09 (damages), and MAI 38.10 (verdict form). See S.B. 43 (2017), § 213.101.6, RSMo (2017), 99th General Assembly, which states it "hereby abrogates all Missouri-approved jury instructions specifically addressing civil actions brought under this chapter (Chapter 213) which were in effect prior to August 28, 2017."

B. S.B. 43 (2017), 99th General Assembly, also states it "hereby expressly abrogates" the Supreme Court decision in *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. banc 2007) regarding "contributing factor;" as well as appellate decisions in *Hurst v. Kansas City Missouri School District*, 437 S.W.3d 327 (Mo. App. 2014) regarding usage of MAI 19.01 in MHRA cases; *Thomas v. McKeever's Enterprises, Inc.*, 388 S.W.3d 206 (Mo. App. 2012) regarding a "but for" instruction; and *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. 2006) regarding the issuance of a business judgment instruction. See S.B. 43 (2017), §§ 213.101.2, 213.101.4, 213.101.5, RSMo. These cases retain validity for actions arising prior to August 28, 2017. Portions of these decisions were expressly abrogated for the limited purposes enumerated by the

Missouri legislature in S.B. 43 for cases arising on or after August 28, 2017. These appellate decisions remain good law on all other issues decided.

C. MAI 38.03 [2012 Revision] (verdict directing—wrongful discharge in violation of public policy), applies to both non-public and public employees for common law causes of action for wrongful termination in violation of public policy and common law causes of action to protect whistleblowers from retaliation. See *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81, 92 (Mo. banc 2010) and *Kunzie v. City of Olivette*, 184 S.W.3d 570, 574-75 (Mo. banc 2006).

D. For a statutory whistleblower cause of action for non-public employees, S.B. 43 enacted the "Whistleblowers Protection Act," effective August 28, 2017. Section 285.575.3, RSMo, provides: "This section is intended to codify the existing common law exceptions to the at-will employment doctrine and to limit their future expansion by the courts. This section, in addition to chapter 213 and chapter 287, shall provide the exclusive remedy for any and all claims of unlawful employment practices." The Act seems to explicitly recognize and codify the common law for wrongful discharge in violation of public policy and further seems to explicitly recognize the remedy provided for retaliatory discharge in a Workers Compensation setting under § 287.780, RSMo.

E. Under § 285.575, RSMo (2017), (the Whistleblower's Protection Act), the person's status as a protected person must be the motivating factor for any adverse decision or outcome. The term "motivating factor" is defined in § 285.575.2(5) as "the employee's protected classification actually played a role in the adverse decision or action and had a

determinative influence on the adverse decision or action." See, MAI 38.05, MAI 38.06, and MAI 38.07 for the language used when submitting the concept of "motivating factor."

F. Under § 285.575.7(3), RSMo (2017), (the Whistleblower's Protection Act), an employee must show by "clear and convincing evidence" that the "conduct of the employer was outrageous because of the employer's evil motive or reckless indifference to the rights of others" in order to be awarded double damages. The statute does not heighten the burden of proof for causation or other damages.

G. According to § 285.575.2(2), the Whistleblower's Protection Act does not apply to "the state of Missouri or its agencies, instrumentalities, or political subdivisions, including but not limited to any public institution of higher education, a corporation wholly owned by the state of Missouri, an individual employed by an employer, or corporations and associations owned or operated by religious or sectarian organizations[.]" See § 285.575.2(2), RSMo (2017).

H. For actions accruing before August 28, 2018, statutory whistleblowing claims by public employees could be brought under § 105.055, RSMo, *et seq.*, as amended in 2010 by H.B. 1868. Under § 105.055.7(3), RSMo (2010), "A public employee shall show by clear and convincing evidence that he or she or a person acting on his or her behalf has reported or was about to report, verbally or in writing, a prohibited activity or a suspected prohibited activity." The clear and convincing standard applies to only one element of the cause of action. Section 105.055, RSMo (2010), did not adopt or incorporate a "motivating factor" standard or any standard. In 2010, *Fleshner v. Pepose Vision Institute*, P.C. 304

S.W.3d 81, 94-95 (Mo. banc 2010), the Court approved the "contributing factor" standard for causation in wrongful discharge in violation of public policy cases.

I. In 2018, in S.B. 1007, the General Assembly amended the statutory cause of action, Public Employee Whistleblower Statute, § 105.055, RSMo. That statute defines public employee, § 105.055.1(2), RSMo, and public employer, § 105.055.1(3), RSMo. Section 105.055, RSMo (2018), did not adopt or incorporate the "motivating factor" standard or any standard. However, in *Fleshner v. Pepose Vision Institute*, P.C. 304 S.W.3d 81, 94-95 (Mo. banc 2010), the Court approved the "contributing factor" standard for causation in wrongful discharge in violation of public policy cases.

J. Under § 105.055.7(3), RSMo (2018), "A public employee shall show by clear and convincing evidence that he or she or a person acting on his or her behalf has reported or was about to report, verbally or in writing, a prohibited activity or a suspected prohibited activity." The clear and convincing standard applies to only one element of the cause of action. Once such conduct is established, "the burden shall be on the public employer to demonstrate that the disciplinary action was not the result of such a report." See § 105.055.7(3), RSMo (2018).

K. Section 105.055.3(1), RSMo (2018), requires at a minimum that the employee reasonably believes that the employer's activity is prohibited, e.g., a violation of any law, rule, regulation or policy; mismanagement; or other acts listed in the statute.

L. Section 213.070, RSMo, Additional Unlawful Discriminatory Practices, provides a cause of action for unlawful retaliation, stating it is unlawful discriminatory practice to "retaliate or discriminate in any manner against any other person because such

person has opposed any practice prohibited by this chapter or because such person has filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter[.]" *McCrainey v. Kansas City Missouri Sch. Dist.*, 337 S.W.3d 746, 754 (Mo. App. 2011), held that a "plaintiff need only have a good faith, reasonable belief that the conduct he or she opposed was prohibited by the MHRA in order to prevail on a retaliation claim[.]" and concluded "that a plaintiff can oppose a practice which is not actually unlawful under the MHRA, yet still proceed with a retaliation claim based on his or her opposition to that practice." *Id.* at 753. The Committee takes no position on whether "a good faith, reasonable belief" is a submissibility issue for the judge or a jury question.

**38.01(A) [2018 Revision] Verdict Directing—Missouri Human Rights Act—
Employment Discrimination (for actions accruing before August 28, 2017)**

[No change to Instruction or Notes on Use.]

Committee Comment (2022 Revision)

[No change to Committee Comment.]

Historical Note (2023 Revision)

(Approved June 28, 2022; Effective January 1, 2023)

(MAI 38.01(A) replaces the prior MAI 31.24 (2005 New).

S.B. 43 (2017), 99th General Assembly states it "hereby abrogates all Missouri approved instructions specifically addressing civil actions brought under this chapter (Chapter 213) which were in effect prior to August 28, 2017." See S.B. 43, § 213.101.6,

RSMo. MAI 38.01(A) and (B), 38.02, 38.03, and 38.04 apply to cases accruing prior to August 28, 2017. For actions accruing on or after August 28, 2017, see MAI 38.03 (verdict directing—wrongful discharge in violation of public policy), MAI 38.05 (verdict directing—retaliatory discharge or discrimination), MAI 38.06 (verdict directing—MHRA employment discrimination), MAI 38.07 (verdict directing—disability disputed), MAI 38.08 (affirmative defense—business judgment), MAI 38.09 (damages), and MAI 38.10 (verdict form).

S.B. 43 (2017), 99th General Assembly, also states it "hereby expressly abrogates" the Supreme Court decision in *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. banc 2007) regarding "contributing factor;" as well as appellate decisions in *Hurst v. Kansas City Missouri School District*, 437 S.W.3d 327 (Mo. App. 2014) regarding usage of MAI 19.01 in MHRA cases; *Thomas v. McKeever's Enterprises, Inc.*, 388 S.W.3d 206 (Mo. App. 2012) regarding a "but for" instruction; and *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. 2006) regarding the issuance of a business judgment instruction. See S.B. 43 (2017), §§ 213.101.2, 213.101.4, 213.101.5, RSMo. These cases retain validity for actions arising prior to August 28, 2017. Portions of these decisions were expressly abrogated for the limited purposes enumerated by the Missouri legislature in S.B. 43 for cases arising on or after August 28, 2017. These appellate decisions remain good law on all other issues decided.

**38.01(B) [2018 Revision] Verdict Directing—Missouri Human Rights Act—
Employment Discrimination by Reason of Disability—Existence of
Disability Disputed (for actions accruing before August 28, 2017)**

[No change to Instruction or Notes on Use.]

Committee Comment (2022 Revision)

[No change to Committee Comment.]

Historical Note (2023 Revision)

(Approved June 28, 2022; Effective January 1, 2023)

(S.B. 43 (2017), 99th General Assembly, states it "hereby abrogates all Missouri approved instructions specifically addressing civil actions brought under this chapter (Chapter 213) which were in effect prior to August 28, 2017." See S.B. 43, § 213.101.6, RSMo. If such action conflicts with Art V, § 5 and Art I, § 13 of the Missouri Constitution (1945), then see MAI 38.01(A) and (B), 38.02, 38.03, and 38.04 apply to cases accruing prior to August 28, 2017. For actions accruing on or after August 28, 2017, see MAI 38.03 (verdict directing—wrongful discharge in violation of public policy), MAI 38.05 (verdict directing—retaliatory discharge or discrimination), MAI 38.06 (verdict directing—MHRA employment discrimination), MAI 38.07 (verdict directing—disability disputed), MAI 38.08 (affirmative defense—business judgment), MAI 38.09 (damages), and MAI 38.10 (verdict form).

S.B. 43 (2017), 99th General Assembly, also states it "hereby expressly abrogates" the Supreme Court decision in *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. banc 2007) regarding "contributing factor;" as well as appellate decisions in *Hurst v. Kansas City Missouri School District*, 437 S.W.3d 327 (Mo. App. 2014) regarding

usage of MAI 19.01 in MHRA cases; *Thomas v. McKeever's Enterprises, Inc.*, 388 S.W.3d 206 (Mo. App. 2012) regarding a "but for" instruction; and *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. 2006) regarding the issuance of a business judgment instruction. See S.B. 43 (2017), §§ 213.101.2, 213.101.4, 213.101.5, RSMo. These cases retain validity for actions arising prior to August 28, 2017. Portions of these decisions were expressly abrogated for the limited purposes enumerated by the Missouri legislature in S.B. 43 for cases arising on or after August 28, 2017. These appellate decisions remain good law on all other issues decided.

**38.02 [2018 Revision] Verdict Directing—Missouri Human Rights Act—
Lawful Justification (for actions accruing before August 28, 2017)**

[No change to Instruction or Notes on Use.]

Historical Note (2023 Revision)

(Approved June 28, 2022; Effective January 1, 2023)

(MAI 38.02 replaces the prior MAI 31.25 (2005 New)).

S.B. 43 (2017), 99th General Assembly states it "hereby abrogates all Missouri approved instructions specifically addressing civil actions brought under this chapter (Chapter 213) which were in effect prior to August 28, 2017." See S.B. 43, § 213.101.6, RSMo. MAI 38.01(A) and (B), 38.02, 38.03, and 38.04 apply to cases accruing prior to August 28, 2017. For actions accruing on or after August 28, 2017, see MAI 38.03 (verdict directing—wrongful discharge in violation of public policy), MAI 38.05 (verdict directing—retaliatory discharge or discrimination), MAI 38.06 (verdict directing—

MHRA employment discrimination), MAI 38.07 (verdict directing—disability disputed), MAI 38.08 (affirmative defense—business judgment), MAI 38.09 (damages), and MAI 38.10 (verdict form).

S.B. 43 (2017), 99th General Assembly, also states it "hereby expressly abrogates" the Supreme Court decision in *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. banc 2007) regarding "contributing factor;" as well as appellate decisions in *Hurst v. Kansas City Missouri School District*, 437 S.W.3d 327 (Mo. App. 2014) regarding usage of MAI 19.01 in MHRA cases; *Thomas v. McKeever's Enterprises, Inc.*, 388 S.W.3d 206 (Mo. App. 2012) regarding a "but for" instruction; and *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. 2006) regarding the issuance of a business judgment instruction. See S.B. 43 (2017), §§ 213.101.2, 213.101.4, 213.101.5, RSMo. These cases retain validity for actions arising prior to August 28, 2017. Portions of these decisions were expressly abrogated for the limited purposes enumerated by the Missouri legislature in S.B. 43 for cases arising on or after August 28, 2017. These appellate decisions remain good law on all other issues decided.

38.03 [2012 Revision] Verdict Directing--Wrongful Discharge in Violation of Public Policy

[No change to Instruction or Notes on Use.]

Committee Comment (2023 Revision)

(Approved June 28, 2022; Effective January 1, 2023)

A. If the case involves constructive discharge, demotion, or adverse job

consequences, this instruction can be easily modified. For cases involving such claims, see *Bennartz v. City of Columbia*, 300 S.W.3d 251, 258 (Mo. App. 2009) (the public-policy exception to the at-will employment doctrine may be established with evidence of constructive discharge); *Bell v. Dynamite Foods*, 969 S.W.2d 847, 853 (Mo. App. 1998), abrogated on other grounds by *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81 (Mo. banc. 2010) (constructive discharge is recognized in common law actions for wrongful discharge claims based upon the common law public policy exception to at-will employment).

B. In *Fleshner*, 304 S.W.3d at 92, the employee was discharged for talking to federal investigators about the employer's violation of Fair Labor Standards Act requirements to pay overtime compensation. The Court expressly adopted a public policy exception to the "at will" doctrine where the employee is discharged for reporting violations of law to authorities or for refusing to perform illegal acts. *Id.*

C. The public policy must be found in a constitutional provision, statute, regulation promulgated pursuant to statute, or a rule created by a governmental body. However, the public policy need only be *reflected* by a constitutional provision, statute, regulation promulgated pursuant to statute, or a rule created by a governmental body, and there need not be a direct violation by the employer of that same statute or regulation. Additionally, "there is no requirement that the violation that the employee reports affect the employee personally, nor that the law violated prohibit or penalize retaliation against those reporting its violation." *Id.* at 97. Moreover, the public policy is applicable to communications made to federal or state officials as well as to the employee's supervisors. *Id.* at 97. See also,

Margiotta v. Christian Hospital Northeast-Northwest, 315 S.W.3d 342 (Mo. banc 2010).

D. In *Fleshner*, the Court also cited the "contributing factor" standard expressed in MAI 31.24 with approval as the standard for causation in this type of wrongful discharge case. *Fleshner*, 304 S.W.3d at 94-95. But see, S.B. 43 (2017) and Historical Note at MAI 38.01(A) and 38.01(B).

E. In *Keveney v. Missouri Military Academy*, 304 S.W.3d 98, 103 (Mo. banc 2010), the Court extended the public policy exception to the at-will doctrine to "contract employees" in addition to "at-will" employees.

F. The Court, under the facts in *Keveney*, also determined that in order to survive a motion to dismiss, an employee must plead the following in order to state a cause of action for wrongful discharge under the public policy exception:

(1) That the employee refused to perform an illegal act or act in a manner contrary to public policy;

(2) That the employee was discharged; and

(3) That there is a causal connection between the employee's discharge and the employee's refusal to engage in the actions at issue.

Id. at 103.

G. The *Margiotta* case limited the public policy exception by excluding situations in which the claimed "public policy" is vague or general and not a specific statute, rule, regulation, or constitutional requirement. The Court found that the two regulations cited in *Margiotta* were vague statements and did not specifically proscribe conduct in the alleged incidents. One regulation was extremely broad as to patient safety, and the other regulation

clearly dealt with building safety and not patient treatment. For these reasons the Court found that summary judgment was appropriately granted. *Margiotta*, 315 S.W.3d at 347-48.

H. In *Bennartz*, 300 S.W.3d at 261-62, the court held that a municipal employee could not maintain a wrongful discharge cause of action against the defendant municipality under the public policy exception because there was no evidence that the defendant municipality had waived sovereign immunity. See e.g. *Kunzie v. City of Olivette*, 184 S.W.3d 570, 574-75 (Mo. banc 2006) (wherein the Supreme Court of Missouri reversed the trial court's dismissal of a public employee's common law claim of wrongful discharge under the public policy exception because discovery had not yet been conducted as to whether the government entity being sued had waived sovereign immunity pursuant to § 537.610, RSMo).

I. Where suit involves multiple causes of damage, see MAI 19.01 and *Hurst v. Kansas City Missouri School District*, 437 S.W.3d 327 (Mo. App. 2014). But see, S.B. 43 (2017) and Historical Note at MAI 38.01(A), 38.01(B) and 38.05.

38.06 [2018 New] Verdict Directing—Missouri Human Rights Act—Employment Discrimination (for actions accruing on or after August 28, 2017)

[No change to Instruction or Notes on Use.]

Committee Comment (2022 Revision)

[No change to Committee Comment.]

Historical Note (2023 Revision)

(Approved June 28, 2022; Effective January 1, 2023)

S.B. 43 (2017), 99th General Assembly states it "hereby abrogates all Missouri approved instructions specifically addressing civil actions brought under this chapter (Chapter 213) which were in effect prior to August 28, 2017." See S.B. 43, § 213.101.6, RSMo. MAI 38.01(A) and (B), 38.02, 38.03, and 38.04 apply to cases accruing prior to August 28, 2017. For actions accruing on or after August 28, 2017, see MAI 38.03 (verdict directing—wrongful discharge in violation of public policy), MAI 38.05 (verdict directing—retaliatory discharge or discrimination), MAI 38.06 (verdict directing—MHRA employment discrimination), MAI 38.07 (verdict directing—disability disputed), MAI 38.08 (affirmative defense—business judgment), MAI 38.09 (damages), and MAI 38.10 (verdict form).

S.B. 43 (2017), 99th General Assembly, also states it "hereby expressly abrogates" the Supreme Court decision in *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. banc 2007) regarding "contributing factor;" as well as appellate decisions in *Hurst v. Kansas City Missouri School District*, 437 S.W.3d 327 (Mo. App. 2014) regarding usage of MAI 19.01 in MHRA cases; *Thomas v. McKeever's Enterprises, Inc.*, 388 S.W.3d 206 (Mo. App. 2012) regarding a "but for" instruction; and *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. 2006) regarding the issuance of a business judgment instruction. See S.B. 43 (2017), §§ 213.101.2, 213.101.4, 213.101.5, RSMo. These cases retain validity for actions arising prior to August 28, 2017. Portions of these decisions were expressly abrogated for the limited purposes enumerated by the Missouri

legislature in S.B. 43 for cases arising on or after August 28, 2017. These appellate decisions remain good law on all other issues decided.

38.07 [2018 New] Verdict Directing—Missouri Human Rights Act—Employment Discrimination by Reason of Disability—Existence of Disability Disputed (for actions accruing on or after August 28, 2017)

[No change to Instruction or Notes on Use.]

Committee Comment (2022 Revision)

[No change to Committee Comment.]

Historical Note (2023 Revision)

(Approved June 28, 2022; Effective January 1, 2023)

S.B. 43 (2017), 99th General Assembly states it "hereby abrogates all Missouri approved instructions specifically addressing civil actions brought under this chapter (Chapter 213) which were in effect prior to August 28, 2017." See S.B. 43, § 213.101.6, RSMo. MAI 38.01(A) and (B), 38.02, 38.03, and 38.04 apply to cases accruing prior to August 28, 2017. For actions accruing on or after August 28, 2017, see MAI 38.03 (verdict directing—wrongful discharge in violation of public policy), MAI 38.05 (verdict directing—retaliatory discharge or discrimination), MAI 38.06 (verdict directing—MHRA employment discrimination), MAI 38.07 (verdict directing—disability disputed), MAI 38.08 (affirmative defense—business judgment), MAI 38.09 (damages), and MAI 38.10 (verdict form).

S.B. 43 (2017), 99th General Assembly, also states it "hereby expressly abrogates" the Supreme Court decision in *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814

(Mo. banc 2007) regarding "contributing factor;" as well as appellate decisions in *Hurst v. Kansas City Missouri School District*, 437 S.W.3d 327 (Mo. App. 2014) regarding usage of MAI 19.01 in MHRA cases; *Thomas v. McKeever's Enterprises, Inc.*, 388 S.W.3d 206 (Mo. App. 2012) regarding a "but for" instruction; and *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. 2006) regarding the issuance of a business judgment instruction. See S.B. 43 (2017), §§ 213.101.2, 213.101.4, 213.101.5, RSMo. These cases retain validity for actions arising prior to August 28, 2017. Portions of these decisions were expressly abrogated for the limited purposes enumerated by the Missouri legislature in S.B. 43 for cases arising on or after August 28, 2017. These appellate decisions remain good law on all other issues decided.

38.08 [2018 New] Missouri Human Rights Act—Business Judgment Rule (for actions accruing on or after August 28, 2017)

[No change to Instruction, Notes on Use, or Committee Comment.]

Historical Note (2023 Revision)

(Approved June 28, 2022; Effective January 1, 2023)

S.B. 43 (2017), 99th General Assembly states it "hereby abrogates all Missouri approved instructions specifically addressing civil actions brought under this chapter (Chapter 213) which were in effect prior to August 28, 2017." See S.B. 43, § 213.101.6, RSMo. MAI 38.01(A) and (B), 38.02, 38.03, and 38.04 apply to cases accruing prior to August 28, 2017. For actions accruing on or after August 28, 2017, see MAI 38.03

(verdict directing—wrongful discharge in violation of public policy), MAI 38.05 (verdict directing—retaliatory discharge or discrimination), MAI 38.06 (verdict directing—MHRA employment discrimination), MAI 38.07 (verdict directing—disability disputed), MAI 38.08 (affirmative defense—business judgment), MAI 38.09 (damages), and MAI 38.10 (verdict form).

S.B. 43 (2017), 99th General Assembly, also states it "hereby expressly abrogates" the Supreme Court decision in *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. banc 2007) regarding "contributing factor;" as well as appellate decisions in *Hurst v. Kansas City Missouri School District*, 437 S.W.3d 327 (Mo. App. 2014) regarding usage of MAI 19.01 in MHRA cases; *Thomas v. McKeever's Enterprises, Inc.*, 388 S.W.3d 206 (Mo. App. 2012) regarding a "but for" instruction; and *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. 2006) regarding the issuance of a business judgment instruction. See S.B. 43 (2017), §§ 213.101.2, 213.101.4, 213.101.5, RSMo. These cases retain validity for actions arising prior to August 28, 2017. Portions of these decisions were expressly abrogated for the limited purposes enumerated by the Missouri legislature in S.B. 43 for cases arising on or after August 28, 2017. These appellate decisions remain good law on all other issues decided.

38.09 [2018 New] Missouri Human Rights Act—Damages (for actions accruing on or after August 28, 2017)

[No change to Instruction, Notes on Use, or Committee Comment.]

Historical Note (2023 Revision)

(Approved June 28, 2022; Effective January 1, 2023)

S.B. 43 (2017), 99th General Assembly states it "hereby abrogates all Missouri approved instructions specifically addressing civil actions brought under this chapter (Chapter 213) which were in effect prior to August 28, 2017." See S.B. 43, § 213.101.6, RSMo. MAI 38.01(A) and (B), 38.02, 38.03, and 38.04 apply to cases accruing prior to August 28, 2017. For actions accruing on or after August 28, 2017, see MAI 38.03 (verdict directing—wrongful discharge in violation of public policy), MAI 38.05 (verdict directing—retaliatory discharge or discrimination), MAI 38.06 (verdict directing—MHRA employment discrimination), MAI 38.07 (verdict directing—disability disputed), MAI 38.08 (affirmative defense—business judgment), MAI 38.09 (damages), and MAI 38.10 (verdict form).

S.B. 43 (2017), 99th General Assembly, also states it "hereby expressly abrogates" the Supreme Court decision in *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. banc 2007) regarding "contributing factor," as well as appellate decisions in *Hurst v. Kansas City Missouri School District*, 437 S.W.3d 327 (Mo. App. 2014) regarding usage of MAI 19.01 in MHRA cases; *Thomas v. McKeever's Enterprises, Inc.*, 388 S.W.3d 206 (Mo. App. 2012) regarding a "but for" instruction; and *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. 2006) regarding the issuance of a business judgment instruction. See S.B. 43 (2017), §§ 213.101.2, 213.101.4, 213.101.5, RSMo. These cases retain validity for actions arising prior to August 28, 2017. Portions of these

decisions were expressly abrogated for the limited purposes enumerated by the Missouri legislature in S.B. 43 for cases arising on or after August 28, 2017. These appellate decisions remain good law on all other issues decided.

38.10 [2018 New] Missouri Human Rights Act—Verdict Form (for actions accruing on or after August 28, 2017)

[No change to Instruction, Notes on Use, or Committee Comment.]

Historical Note (2023 Revision)

(Approved June 28, 2022; Effective January 1, 2023)

S.B. 43 (2017), 99th General Assembly states it "hereby abrogates all Missouri approved instructions specifically addressing civil actions brought under this chapter (Chapter 213) which were in effect prior to August 28, 2017." See S.B. 43, § 213.101.6, RSMo. MAI 38.01(A) and (B), 38.02, 38.03, and 38.04 apply to cases accruing prior to August 28, 2017. For actions accruing on or after August 28, 2017, see MAI 38.03 (verdict directing—wrongful discharge in violation of public policy), MAI 38.05 (verdict directing—retaliatory discharge or discrimination), MAI 38.06 (verdict directing—MHRA employment discrimination), MAI 38.07 (verdict directing—disability disputed), MAI 38.08 (affirmative defense—business judgment), MAI 38.09 (damages), and MAI 38.10 (verdict form).

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v. Kansas City Missouri School District, 437 S.W.3d 327 (Mo. App. 2014) regarding usage of MAI 19.01 in MHRA cases; *Thomas v. McKeever's Enterprises, Inc.*, 388 S.W.3d 206 (Mo. App. 2012) regarding a "but for" instruction; and *McBryde v. Ritenour School District*, 207 S.W.3d 162 (Mo. App. 2006) regarding the issuance of a business judgment instruction. See S.B. 43 (2017), §§ 213.101.2, 213.101.4, 213.101.5, RSMo. These cases retain validity for actions arising prior to August 28, 2017. Portions of these decisions were expressly abrogated for the limited purposes enumerated by the Missouri legislature in S.B. 43 for cases arising on or after August 28, 2017. These appellate decisions remain good law on all other issues decided.