Sexual Orientation Is Protected under Michigan’s Civil Rights Law

Article By
William S. Cook
Matthew High
Wilson Elser Moskowitz Edelman & Dicker LLP
Insights

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On July 28, 2022, in Rouch World v. Michigan Department of Civil Rights, the Michigan Supreme Court held that Michigan’s civil rights statute, the Elliott-Larsen Civil Rights Act (ELCRA), prohibits discrimination on the basis of sexual orientation.

The Court’s ruling is hardly a surprise given the United States Supreme Court’s recent decision in Bostock v. Clayton County, 140 S. Ct. 1731 (2020), which similarly held that the federal civil rights statute, Title VII, protects gay, lesbian and transgender employees from discrimination based on sex. The Michigan Supreme Court’s opinion is important because it adds protections to employees at the state level, and as a result employers are more susceptible to state law claims. Employers would be wise to adjust their employee handbooks accordingly.

In Rouch World, the Michigan Department of Civil Rights (MDCR) investigated two
acts of sex-based discrimination. The one that made it before the Michigan Supreme Court involved Rouch World, which operated an event center in Sturgis, Michigan. Two women contacted Rouch World to arrange to have their wedding at its venue. Rouch World, however, refused, citing the company’s owners’ religious beliefs.

The case found its way through the Michigan courts and ended up before the Michigan Supreme Court to answer the question of whether the ELCRA’s prohibition on discrimination “because of ... sex” applies to discrimination based on sexual orientation. A central part of the Court’s analysis was on how sexual orientation is inseparable from “sex.” Even though the ELCRA doesn’t define “sex,” the Court concluded that sexual orientation is inextricably tied to sex:

For example, attraction to females in a fellow female is considered homosexual, while the same trait in a male is considered heterosexual; the sex of the individual is necessary to determine their sexual orientation. To discriminate on the basis of sexual orientation, then, also requires the discriminator to intentionally treat individuals differently because of their sex.

The Court also analyzed the statutory prohibition in terms of the facts of the case before it:

Here, plaintiff Rouch World denied female complainant Johnson’s request for services related to her wedding with female complainant Oswalt. Had Johnson instead been a male, Rouch World would not have denied its services. In other words, but for Johnson’s sex, Rouch World would have rendered its services to Johnson. Although Rouch World’s motivation for its denial of services was based on Johnson’s sexual orientation, it is nevertheless true that, holding all other facts constant (including the sex of the romantic partner involved), Rouch World discriminated against Johnson because of her sex.

*Rouch World* now puts Michigan’s civil rights law on par with its federal counterpart Title VII and protects against discrimination on the basis of sexual orientation. That discrimination is “because of sex” and prohibited by Michigan’s civil rights law. “In sum, a person’s sexual orientation necessarily implies conclusions about their sex, and so ‘it is impossible to discriminate against a person’ for their sexual orientation ‘without discriminating against that individual based on sex.’”

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