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July 29, 2022

### Michigan Supreme Court Rules that State Civil Rights Act Bans Discrimination Based on Sexual Orientation

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On July 28, 2022, the Michigan Supreme Court ruled 5-2 that the Michigan Elliot Larsen Civil Rights Act's ("ELCRA") prohibition against sex discrimination includes a prohibition against discrimination based on sexual orientation. In *Rouch World, LLC and Uprooted Electrolysis, LCC v. Department of Civil Rights et. al.*, the Plaintiffs argued that the Michigan Department of Civil Rights ("MDCR"), an agency charged with enforcement of ELCRA, erroneously concluded in a 2018 interpretive guidance that the prohibition of sex discrimination in ELCRA includes a prohibition against discrimination based on sexual orientation. Plaintiffs argued that this guidance and enforcement actions based on the guidance were contrary to the language of the statute, the intent of the legislature, and a prior Michigan Court of Appeals decision, *Barbour v. Dep't of Social Services*, 198 Mich App 183 (1993).

The majority opinion acknowledged that, while the motivation of the legislature in banning "sex discrimination" in 1976 may have been to protect against gender discrimination, the prohibition of discrimination "because of" sex clearly encompasses discrimination based on sexual orientation. Citing a U.S. Supreme Court decision holding that the federal civil rights statute's prohibition against sex discrimination includes a prohibition against sexual orientation discrimination (*Bostock v. Clayton County*, 140 S Ct 1731 (2020)), the Michigan Supreme Court held that sexual orientation is "inextricably bound up with sex" because a person's sexual orientation is generally determined by reference to their own sex. Therefore, the Court concluded that plain language of ELCRA bars discrimination based on sexual orientation and overruled *Barbour*. The bottom line is that there is now a bright line rule that discrimination based on sexual orientation is prohibited by Michigan law as well as federal law.

Contact any member of **Bodman's Workplace Law Group** for more information. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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