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March 17, 2023

Michigan Amends Civil Rights Act To Include LGBTQ Protections

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On March 16, 2023, Michigan Governor Gretchen Whitmer signed a bill that expands the Elliott-Larsen Civil Rights Act (“ELCRA”) to include protections for LGBTQ individuals.

ELCRA Amendments

Originally enacted in 1977, ELCRA currently prohibits employment discrimination based on religion, race, color, national origin, age, sex, height, weight, and marital status. The bill amends this list of enumerated protected classes to include “sexual orientation” and “gender identity or expression.”

The bill defines “gender identity or expression” as “having or being perceived as having a gender-related self-identity or expression whether or not associated with an individual’s assigned sex at birth.” “Sexual orientation” is defined as “having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such an orientation or being identified with such an orientation.”

Practical Effect

Sexual orientation and gender identity have been protected under federal law since 2020, when the Supreme Court held that firing individuals because of their sexual orientation or transgender status violates Title VII’s prohibition on discrimination “because of sex.” Sexual orientation has also been protected under Michigan law since July 2022, when the Michigan Supreme Court held that ELCRA’s prohibition on discrimination “because of . . . sex” encompassed discrimination based on sexual orientation. However, while the Michigan Court of Claims previously held that “gender identity” was included under ELCRA’s prohibition on discrimination because of sex, the Michigan Supreme Court did not address gender identity or gender expression.

Therefore, the bill will concretely add “gender identity or expression” to the list of protected classes and will codify the protection of “sexual orientation” under Michigan law.

These amendments are significant because the Michigan Civil Rights Commission will be able to investigate claims of discrimination based on gender identity or expression and bring administrative claims. Furthermore, claims brought under ELCRA are procedurally and substantively different from federal Title VII claims. Unlike under federal law, ELCRA does not require that plaintiffs exhaust their administrative remedies before filing an employment discrimination suit. Also, supervisors can be found individually liable under ELCRA's employment provision, but they cannot under Title VII.

The bill will take effect 90 days after its enactment. In order to avoid liability, employers should review their policies and procedures regarding discrimination and provide corresponding training to human resources and managerial employees.

Please contact any member of **Bodman's Workplace Law Group** if you need assistance with reviewing/drafting your non-discrimination policies, or for advice on investigating/responding to complaints. Bodman cannot respond to your questions or receive information from you without establishing an attorney-client relationship and clearing potential conflicts with other clients. Thank you for your patience and understanding.

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