

Eleventh Circuit Finds Gender-Affirming Surgery Exclusion in Governmental Employer's Health Plan Violated Title VII

Chad DeGroot

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On May 13, 2024, the Eleventh Circuit, in *Lange v. Houston County, GA*, held that a governmental employer's health plan violated Title VII by applying an exclusion for services and supplies associated with gender reassignment surgery. The Court relied on the Supreme Court's decision in *Bostock v. Clayton County, GA*, which held that Title VII's protections against sex discrimination included discrimination based on sexual orientation and gender identity.

Prior to this decision, most of the litigation regarding gender-affirming care exclusions had been brought under Section 1557 of the Affordable Care Act, which prohibits discrimination in healthcare based on, among other things, sex, including gender identity. However, Section 1557 generally only applies to entities that receive HHS funding, and individual plans offered on health insurance Marketplaces. The *Lange* decision confirms that Title VII may also provide a mechanism to successfully challenge such exclusions in employer-sponsored health plans where the employer is not subject to Section 1557.

If you have any questions as to how this decision might impact your health plan, please contact a Laner Muchin attorney in the Employee Benefits Group.

Attorneys

Chad R. DeGroot

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