

Michigan Legislature Expands State Civil Rights Act to Protect Against Discrimination Based on Gender Identity and Sexual Orientation

March 10, 2023

On March 8, 2023, the Michigan Legislature passed an amendment to the state's Elliot-Larsen Civil Rights Act (ELCRA) that explicitly includes protections against discrimination on the basis of sexual orientation, gender identity, or expression. Senate Bill 4 (2023) expands the protections of the ELCRA in both employment and in public accommodations and services. The bill will now head to Governor Gretchen Whitmer's desk for her expected signature.

While the Michigan Supreme Court **ruled** in *Rouch World, LLC, v. Department of Civil Rights* that the existing nondiscrimination provisions in the ELCRA include protections for sexual orientation and gender identity, that decision could have been reversed by a future court ruling if not codified into law.

The amendment defines "sexual orientation" as "having an orientation for heterosexuality, homosexuality, bisexuality or having a history of such an orientation or being identified with such orientation." It further defines gender identity or expression as "having or being perceived as having a gender-related self-identity or expression whether or not associate with an individual's assigned sex at birth."

Under this law, employers could face liability if they are found to have discriminated against or harassed LGBTQ+ applicants or employees. The law also prevents employers from making inquiry to job applicants about their sexual orientation, gender identity or expression.

Key Takeaways

Employers subject to Title VII have been barred from discriminatory acts based on sexual orientation and gender identity since the 2020 Supreme Court ruling in *Bostock v Clayton Co.* Many employers have long since integrated workplace protections and policies to include LGBTQ+ applicants and workers.

Michigan employers who do not yet have policies that reflect the scope of these protections should review and revise their workplace policies and practices, managerial training materials, employee training sessions, and any other practice which may otherwise impact employees because of their sexual orientation and gender identity.

If you have questions about how the expansion of ELCRA will affect your organization, please contact your Miller Canfield attorney or one of the authors of this alert.