Eleventh Circuit Vacates Title VII Decision Requiring Coverage for Gender-Affirming Surgery

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Lange v. Houston Cnty., 110 F.4th 1254 (11th Cir. 2024)

Available at ***https://media.ca11.uscourts.gov/opinions/pub/files/202213626.1.pdf***

A federal appellate court has vacated its prior holding that an employer sponsoring a self-insured health plan violated Title VII of the Civil Rights Act because the plan excluded coverage for gender-affirming surgery. The lawsuit was brought by a transgender employee who had been denied coverage for surgery recommended by her physician to treat gender dysphoria. A federal trial court ruled that the plan exclusion constituted discrimination based on sex and permanently enjoined the employer from any further enforcement or application of the exclusion. On appeal, a three-judge panel of the Eleventh Circuit upheld that order, citing the Supreme Court’s Bostock decision and holding that discrimination based on transgender status necessarily entails discrimination based on sex. The court concluded that because transgender individuals are the only plan participants who qualify for gender-affirming surgery, the exclusion of such surgery discriminates against transgender participants based on their sex in violation of Title VII.

Following the decision, the employer petitioned for a rehearing by the full Eleventh Circuit. The United States government and multiple civil rights organizations filed briefs supporting the employee, while 23 states and a Christian employers’ organization filed in support of the employer. The court agreed to a rehearing and vacated the panel’s prior opinion.

EBIA Comment: The application of federal nondiscrimination laws such as Title VII and Affordable Care Act Section 1557 to gender-identity-related health plan benefits continues to be a hot topic. Recently, courts blocked HHS from implementing or enforcing its 2024 Section 1557 regulations, which provide that “discrimination on the basis of sex” for purposes of Section 1557 specifically includes discrimination based on gender identity. As the reach of Title VII and Section 1557 gets sorted out in the courts, plan sponsors, insurers, and TPAs should continue to monitor developments and be cautious of plan provisions that could invite costly legal challenges. For more information, see EBIA’s Group Health Plan Mandates manual at Sections XXI.C (“EEOC’s Position on Title VII and Health Coverage”), XXI.D (“Court Decisions Applying Title VII to Health Coverage”), and XXI.M.1 (“Interaction of Title VII and Affordable Care Act Section 1557”). See also EBIA’s Health Care Reform manual at Section XXXIV.A (“Section 1557 Nondiscrimination: Grounds Prohibited Under Federal Laws”) and EBIA’s Self-Insured Health Plans manual at Section XIII.D (“Benefits Must Not Be Discriminatory”).

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