

CLIENT ALERTS

Michigan Expands ELCRA Protections For Employees

Client Alert

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For the first time in forty years, Michigan has a democratic governor and democrats control both the Michigan House and Senate. Michigan Democrats have a broad agenda involving expansion of employee rights. For example, the legislature has already started the process of repealing Michigan's Right to Work law and reinstating Prevailing Wage laws that were repealed in June of 2018. And the Michigan legislature has already crossed one item off its list of additional employee rights, by expanding the Elliott-Larsen Civil Rights Act (ELCRA) to include as protected categories sexual orientation and gender identity or expression.

Protections for Sexual Orientation and Gender Identity or Expression

On March 16, 2023 Governor Whitmer signed into law a bill amending ELCRA. This amendment added "sexual orientation" and "gender identity or expression" to the list of protected categories under ELCRA. This amendment makes it unlawful to discriminate against individuals based on sexual orientation and gender identity or expression in employment, public accommodations and public services, educational facilities, and housing and real estate. As we reported previously, in the *Rouch World* decision last year, the Michigan Supreme Court ruled that the prohibition of discrimination based on "sex" within ELCRA also prohibits discrimination based on sexual orientation. The *Rouch World* decision did not expressly address whether gender identity is a protected class, but the reasoning of the case suggested the Michigan Supreme Court would likely also find gender identity protected under ELCRA for the same reasons as sexual orientation. However, the new amendments make clear that discrimination based on gender identity or expression (as well as sexual orientation) are prohibited under Michigan law.

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The CROWN Act

There may be additional ELCRA amendments on the horizon. Late last month, State Senator Sarah Anthony reintroduced her bill to prohibit discrimination based on hair texture and protected hair styles. The bill, known as the Create a Respectful and Open World for Natural Hair (CROWN) Act, would amend ELCRA to provide that the term “Race” includes traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.” See Michigan Senate Bill 0090. The amendment would also provide that “protective hairstyles” includes hairstyles such as braids, locks, and twists. *Id.* The bill is part of a growing trend in the United States to protect people from hair style discrimination. In fact, nearly 20 states have passed a version of the CROWN Act. Given the democratic majority in the Michigan House and Senate, it seems likely the CROWN Act will eventually pass both chambers and be signed into law by Governor Whitmer.

What Does This Mean for Employers?

Compliance with the ELCRA amendment should not be a significant change for most employers. Most, if not all, employers already prohibit discrimination based on sexual orientation and gender identity or expression due to similar prohibitions already in place under federal law. If hairstyle discrimination is also added to ELCRA, employers will need to amend existing policies and practices to include hairstyle discrimination and would need to train employees and supervisors on how to avoid hairstyle discrimination. To date, this bill has not passed either chamber.

It is important to recognize that these bills are likely not the end of probable changes. The Michigan legislature is likely to continue working to pass additional employee protections and benefits. Indeed, the repeal of Michigan’s Right to Work law may well be next. Both the Michigan Senate and House have approved bills repealing Right to Work. Now both chambers must agree on the final language for the bill before sending to Governor Whitmer where it would be likely to be signed into law. If you have any questions about any of these bills or any other labor and employment issue, please contact your Butzel Labor & Employment Attorney.

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