

# CLIENT ALERTS

---

## Michigan Supreme Court Rules ELCRA Prohibits Sexual Orientation Discrimination

### Client Alert

8.2.2022

The Michigan Supreme Court has recently held that the prohibition against sex discrimination in the Elliot-Larsen Civil Rights Act (“ELCRA”) also prohibits discrimination on the basis of sexual orientation. The case is *Rouch World, LLC v Department of Civil Rights*, No 162482, \_\_\_ Mich \_\_\_, \_\_\_ NW2d \_\_\_ (July 28, 2022). Accordingly, employers are prohibited from discriminating in any of the terms and conditions of employment on the basis of sexual orientation.

The case originally involved two separate allegations of discrimination. Rouch World, LLC, declined to host a same-sex wedding on religious grounds. Uprooted Electrolysis, LLC, declined to provide hair-removal services to a transgender woman on religious grounds. The individuals who were denied services filed complaints with the Michigan Department of Civil Rights (MDCR). When the MDCR began investigating the two complaints, Rouch World and Uprooted Electrolysis sought declaratory judgment that ELCRA did not prohibit discrimination on the basis of sexual orientation and gender identity. Because of the manner in which the case was appealed, the Michigan Supreme Court only considered whether ELCRA prohibits sexual orientation discrimination, not gender identity discrimination. In holding that sexual orientation discrimination was prohibited, the Court found that the term “sex” means that discrimination on the basis of sexual orientation necessarily involves discrimination on the basis of sex. While the *Rouch World* decision did not expressly address whether gender identity, separate from sexual orientation, is a protected class, the reasoning of the case suggests the Michigan Supreme Court would find gender identity protected under ELCRA for the same reasons as sexual orientation.

### Related People

Blake Padget  
Shareholder

Daniel B. Tukel  
Shareholder

### Related Services

Labor and Employment

## CLIENT ALERTS

---

While sexual orientation discrimination has been unlawful under Title VII for several years, the *Rouch World* decision is important regarding Michigan law. There are important differences between Title VII and ELCRA. For example:

- ELCRA applies to any employer with one or more employees, while Title VII only applies to employers that have fifteen or more employees.
- ELCRA proscribes discrimination in places of public accommodation, while Title VII is limited to discrimination in the employment context. Indeed, the *Rouch World* decision did not involve an employment dispute, but one over a public accommodation.
- ELCRA defines an “employer” to include an agent of the employer.

Many employers may already prohibit sexual orientation and gender identity discrimination in employment, but this decision serves as a good reminder to ensure your policies are up to date. Moreover, ELCRA has implications beyond the employment context such that all Michigan businesses should take note.

If you have any questions about how this decision may affect your business or any other related employment issue, please contact your Butzel Labor & Employment Attorney.

**Daniel B. Tukul**

248.258.1431

tukul@butzel.com

**Blake C. Padgett**

248.258.1305

padgett@butzel.com