



Appeals Court Hands Victory to Transgender Employee Seeking Health Benefits: Key Takeaways and 3 Steps Employers Can Take Now

Insights

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A federal appeals court recently held that an employer's health insurance plan wrongly excluded coverage for gender-affirming care in violation of federal civil rights law – offering a warning to employers across the country when it comes to supporting transgender workers. The exclusion drew a line between gender-affirming surgery and other operations and intentionally carved out an exclusion based on one's transgender status, which the 11th Circuit Court of Appeals found violated Title VII of the Civil Rights Act of 1964. What do employers and benefit plans need to know about the May 13 decision?

Dispute over Health Plan Exclusion Leads to Lawsuit

Anna Lange, an employee of the Houston County (GA) Sheriff's Office, suffered from gender dysphoria. Her doctor determined gender affirming surgery was medically necessary, and Lange turned to her health insurance plan to cover the costs. However, the Sheriff's Office's health plan excluded coverage for claims it considered not medically necessary – including services and supplies for a sex change operation – and thus denied Lange's insurance claim.

She filed claims against the Sheriff's Office and the county and requested relief under Title VII, the Americans with Disabilities Act (ADA), and the Equal Protection Clause of the United States Constitution.

The lower court ruled in Lange's favor on the Title VII claim and found the exclusion of services and supplies for a sex change was facially discriminatory as a matter of law. It found that Lange's gender was inextricably tied to the denial of coverage, and pointed to the Supreme Court's 2020 decision that held that discrimination because of an individual's sexual orientation or gender identity – including being transgender – is unlawful discrimination "because of sex" under Title VII.

The case proceeded to trial to determine damages and a jury awarded Lange \$60,000. After the trial, the court permanently blocked the employer from further enforcing the exclusion.

"Cheap Plan" is No Excuse For Discrimination

The Sheriff's Office and county appealed the decision, but the 11th Circuit Court of Appeals – covering Georgia, Florida, and Alabama – agreed with the lower court. It expressly held that the exclusion was a facially discriminatory policy and further said that a blanket denial of gender-affirming surgery punished transgender employees based upon their perceived gender non-conformity.

While a dissenting judge tried to defend the employer's decision in part on the fact that the health plan was a no-frills policy that excluded many other types of procedures, the Court of Appeals did not buy that argument. It concluded the decision by saying, "cost savings do not excuse discrimination, nor may they be used to circumvent liability under Title VII."

A Good Reminder for Employers

This decision is a good reminder for employers that no further proof of disparate intent is needed to establish a Title VII violation when a policy or practice discriminates against a protected characteristic. Additionally, health benefits are considered a form of compensation and fall under Title VII's purview.

Title VII's Definition of an Employer is Broad

The 11th Circuit Court of Appeals expressly noted that the definition of an employer is liberally construed and that courts may consider the totality of the employment relationship in determining whether an entity is an employer. In this case, the delegation of administering a health plan was enough to qualify the County as an agent and employer under Title VII.

3 Steps Employers Can Take

In light of this ruling, employers across the country – especially those in Georgia, Florida, and Alabama – should consider taking these three steps to ensure they are in compliance with the current interpretation of Title VII.

1. Review Your Health Plan

This decision follows several other decisions across the country that establish further protection for transgender workers. You should review your health plan with counsel and determine if any exclusions are discriminatory on their face.

2. Review Your Policies

You should also review your employee handbook and policies to ensure that there are not any policies excluding employees based upon their gender identity. In particular, you should assess your dress and appearance policies to ensure that they are gender-neutral and do not include standards

based upon gender stereotypes. Transgender employees should be allowed to follow standards that align with their gender identity and expression.

3. Ensure Your Managers are Properly Trained

You should train your managers on company policies on equal employment opportunity and transgender issues. Managers should know the necessary steps to take if an employee informs them that they plan to transition to another gender. For example, managers should understand if reasonable accommodations need to be provided to the transgender employee or the steps needed to be taken if the employee desires to change their pronouns.

Conclusion

This area of the law is rapidly changing. We'll continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to ensure you receive the latest news directly to your inbox. For further information, contact your Fisher Phillips attorney or the authors of this Insight.

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