

EMPLOYEE BENEFITS

Recent Court Decisions Raise Concerns About Health Plan Exclusions for Gender Dysphoria and Transgender Treatments

Recently, two federal district courts decided cases¹ that raise questions regarding the ability of group health plans to exclude coverage for medically necessary gender dysphoria-related care and sex change operations. In both cases, the federal district court granted an employee's motion for summary judgment on a claim asserting that an employer's health plan violated federal law by including an exclusion for certain gender dysphoria and transgender treatments. Both courts relied on the Supreme Court's decision in [Bostock v. Clayton County](#),² applying the rationale of that holding to benefits provided under an employer's group health plan (which were considered part of the employee's compensation or privileges of employment).³

In light of these recent decisions, employers subject to the jurisdiction of the federal courts in the Middle District of Georgia and the Middle District of North Carolina should examine their health plans to determine whether they have exclusions for certain medical treatments or procedures when prescribed for gender dysphoria or to accomplish a sex change or modification. If so, the employer should consult with its legal counsel regarding the risks of retaining such an exclusion in the health plan in light of the recent court decisions referenced above. Employers outside of these jurisdictions that sponsor health plans containing these types of exclusions should also consult with their legal counsel. While it remains to be seen whether other courts will reach similar decisions, the presence of these types of exclusions may increase the risk of litigation due to the Supreme Court's ruling in *Bostock* and could potentially impact the outcome of such litigation.

¹See [Lange v. Houston County, Georgia](#) (decided by the United States District Court for the Middle District of Georgia) and [Kadel v. Fowell](#) (deciding by the United States District Court for the Middle District of North Carolina).

²In this 2020 decision regarding Title VII employment discrimination protections, the Supreme Court ruled that because an employee's sex is a necessary element in making employment decisions based on an employee's sexual orientation or transgender status, "[a]n employer who fires an individual merely for being gay or transgender defies the law."

³Both cases also involved claims under the Equal Protection Clause of the Fourteenth Amendment, which generally prohibits governmental entities from denying "to any person within its jurisdiction the equal protection of the laws."



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