Bostock v. Clayton County, Georgia - What It May Mean for Group Health Plans

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The U.S. Supreme Court's recent decision in *Bostock v. Clayton County, Georgia* held that Title VII of the Civil Rights Act of 1964 protects the employment rights of individuals who are gay, lesbian, or transgender because sex plays a necessary and undisguisable role in discrimination based on sexual orientation and gender identity. Although this case addressed whether an employer could fire an individual based on sexual orientation or gender identity, there could also be important implications for benefit plans. For example, employees could use the *Bostock* decision to seek coverage under group health plans for certain procedures that have traditionally been excluded from coverage, such as gender-affirmation surgery, arguing that such exclusions violate the protections under Title VII. If the plan covers implants after a mastectomy but would not cover the same procedure for an individual who is transitioning, the exclusion for transitioning individuals may also be challenged based on the ruling in *Bostock*. Likewise, *Bostock* provides additional support for the argument that exclusion of same-sex spouses violates Title VII. Employers should (i) consider reviewing their health plans and identifying any areas where there is a risk that coverage could be challenged as discriminating on the basis of sexual orientation or gender identity and (ii) contact their third-party administrators, insurers, and stop-loss carriers to discuss the potential implications of the *Bostock* ruling on their plans. The *Bostock* opinion is available **here**.

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