

Eleventh Circuit Holds Exclusion of Gender-Affirming Surgery Violates Title VII

May 21, 2024

PRACTICES Employee Benefits and Executive Compensation

The U.S. Court of Appeals for the Eleventh Circuit recently affirmed a district court decision that held that a group health plan’s exclusion of “[d]rugs for sex change surgery” and “[s]ervices and supplies for a sex change and/or the reversal of a sex change” (the **“Exclusion”**) is facially discriminatory in violation of Title VII of the Civil Rights Act of 1964 (**“Title VII”**). The U.S. Supreme Court clarified in *Bostock v. Clayton County, Georgia* that discrimination based on transgender status necessarily entails discrimination based on sex under Title VII; we previously discussed *Bostock* [here](#). Applying *Bostock*, the Eleventh Circuit concluded that the district court was correct in ruling that the Exclusion violated Title VII, stating that “[b]ecause transgender persons are the only plan participants who qualify for gender-affirming surgery, the plan denies health care coverage based on transgender status”. The court added that the discrimination claim was not affected by the fact that other transition-related care was available for coverage under the plan.

Although case law regarding application of Title VII to group health plan exclusions of gender dysphoria treatment continues to evolve, this latest case suggests plan sponsors face a litigation risk with respect to the exclusion of gender-affirming surgery, even where other treatments for gender dysphoria are covered under the plan. Employers should review their plan exclusions and consider the costs of covering such services as compared to the potential risk of litigation.

The Eleventh Circuit opinion is available [here](#).