

Service

Labor & Employment

Professionals

TERRY L. POTTER

ST. LOUIS:

314.345.6438

TERRY.POTTER@

HUSCHBLACKWELL.COM

JULIANNE P. STORY

KANSAS CITY:

816.983.8230

JULIANNE.STORY@

HUSCHBLACKWELL.COM

Missouri Ruling Defines the Scope of Discrimination Based on Sex

On October 27, 2015, in a case of first impression, the Missouri Court of Appeals ruled that the Missouri Human Rights Act (MHRA) does not prohibit discrimination on the basis of sexual orientation. The Court found that “sex,” a protected class under MHRA, refers only to gender and not sexual orientation.

The Pittman Petition

In *Pittman v. Cook Paper Recycling Corp.*, the Court affirmed the Circuit Court’s finding that former employee Pittman failed to state a claim for sex discrimination because his claim alleged discrimination based on sexual orientation. In his petition, Pittman argued that his employer caused the “workplace to be an objectively hostile and abusive environment based on sexual preference” and that his employment was terminated because of his sexual orientation. Specifically, Pittman pointed to management’s derogatory comments in the workplace that targeted his sexual orientation, including asking whether he had AIDS, and outward disapproval of his male companion.

The MHRA prohibits an employer from discriminating against an employee on account of a protected status, including “race, color, religion, national origin, sex, ancestry, age or disability.” For Pittman to prevail, he had to establish that sexual orientation falls under the prohibition against discrimination based on an individual’s sex.

The Court’s Ruling

The Court found that the “clear and unambiguous” language of the MHRA does not encompass sexual orientation as a protected class. The Court narrowly interpreted “sex” to mean gender, and it approved a Webster’s Dictionary definition of “sex” as the “two divisions of human beings respectively designated male or female.” Consequently, because the Court

found that “sexual orientation” or “sexual preference” did not fall within the scope of the legislature’s intended meaning of “sex,” it could not find that the above conduct was prohibited under the statute. The Court noted that it would have to “liberally construe” Pittman’s petition to allow his claim to proceed.

The Court left open the possibility that a claim of gender stereotyping could fall within the protected status of “sex.” Because Pittman did not allege harassment or discrimination as a means of gender stereotyping, the Court stated it did not need to rule on the viability of this potential claim. It is also noteworthy that federal jurisprudence interpreting Title VII has found that sex discrimination includes discrimination on the basis of gender stereotyping.

What This Means to You

While several states have enacted legislation that expressly describes sexual orientation as a protected status, Missouri has refused to do so. Some municipalities, including Kansas City and St. Louis, have added sexual orientation to the list of protected classes, so employers should review local authorities to comply.

The legal landscape, however, could be changing. Pittman has expressed his intent to appeal the decision to the Supreme Court of Missouri. The recent decision could also prompt legislative action to amend the MHRA to add “sexual orientation” to the list of protected classes. Additionally, the *Pittman* Court’s acknowledgment that a claim of discrimination based on gender stereotyping has not been addressed in Missouri leaves open the possibility of an employee making an indirect claim of sexual orientation discrimination through the lens of gender stereotyping.

In the meantime, employers should be cautious about accepting the *Pittman* decision as a green light for allowing harassment or discriminatory conduct in the workplace based on an employee’s sexual orientation. It is a best practice for employers to provide a harmonious work environment to all employees by prohibiting bullying behavior, regardless of whether such behavior is based on a protected status.

Contact Us

If you have questions regarding this matter, please contact one of Husch Blackwell's Labor & Employment attorneys.