

Internal alert

COMPLIANCE CONSULTING



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Federal appellate court rules employers in Alabama, Florida and Georgia must cover gender transition services under health plans

The U.S. Court of Appeals for the Eleventh Circuit (Alabama, Florida and Georgia) has ruled that an employer's health plan that does not cover treatment for gender dysphoria, including gender-affirming surgery, violates Title VII, which is the federal civil rights law banning discrimination on the basis of sex. The case of *Lange v. Houston County Georgia* is now binding precedent and controlling law in Alabama, Florida and Georgia. The decision comes on the heels of regulations issued under ACA Section 1557, which prohibit discrimination by covered entities in health programs or activities on the basis of sex, including gender dysphoria, gender identity and sexual orientation.

Lockton comment: Title VII is a federal law that applies to all private and public employers, with narrow exceptions for small employers (less than fifteen employees). Another federal law, the Religious Freedom Restoration Act, protects closely held businesses from being required to comply with a mandate to provide coverage under its group health plan when the owners of that corporation have an objection to providing that coverage based on their religious beliefs.

Employers in Alabama, Florida and Georgia that do not offer coverage for gender dysphoria, including gender-transition surgery, risk investigations by the Equal Employment Opportunity Commission (EEOC), the federal agency policing federal employment nondiscrimination laws, as well as lawsuits from plan participants.

Executive Summary

- A federal appeals court has ruled that an employer cannot exclude coverage under its health plan for gender dysphoria, including gender-affirming surgery.
- The result is now binding legal precedent in Alabama, Florida and Georgia, and employers in those states will need to immediately comply.
- Although the case is not binding outside those three states, the appellate decision comes on the heels of regulations issued under ACA that would protect employees with gender dysphoria from workplace discrimination, including health insurance coverage.
- Employers who are not currently covering treatment for gender dysphoria should consider amending their health plans to provide that coverage (subject to the caveat for employers with deeply held religious beliefs).

Case facts

The plaintiff, Anna Lange, is a transgendered woman employed by the Houston County, Georgia Sherriff's office, who was diagnosed with gender dysphoria in 2017. Assigned the male sex at birth, Lange's doctor prescribed a treatment plan including both hormone therapy and gender-affirming surgery. The employer health plan denied coverage based on an exclusion for "[d]rugs for sex change surgery" and "[s]ervices and supplies for a sex change and/or the reversal of a sex change."

Lange filed a complaint with EEOC and sued. The trial court found the plan exclusion was facially discriminatory, awarded Lange \$60,000 in compensatory damages for emotional distress, and enjoined Houston County from enforcement or application of the plan exclusion.

Appellate court weighs in

Citing a [2020 U.S. Supreme court decision \(Bostock\)](#), the U.S. Court of Appeals for the Eleventh Circuit agreed that the plan exclusion was discriminatory on its face because the employer intentionally treated an employee in a protected class worse than other similarly situated employees. Although Houston County alleged that the costs of gender-affirming surgeries would be burdensome, the appellate court ruled that an injury resulting from a facially discriminatory policy cannot justify its exclusion.

The court affirmed the jury award for \$60,000 and enjoined Houston County from enforcing the exclusion in its health plan.

Next steps

Many employers provide coverage for gender dysphoria for a variety of reasons, including litigation risk for failing to do so. The *Lange* case is notable for several reasons, including that the added cost of providing coverage for gender dysphoria is not a valid employer defense for not offering the coverage.

Lockton comment: Lockton's Actuarial Practice estimates that the cost increase on account of covering gender dysphoria is about 0.1% as less than 1% of a standard population will access those services.

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