

## Michigan AG and Civil Rights Commission at odds over LGBT protections



Miriam L. Rosen | Thursday, July 26, 2018

There's a battle brewing in Michigan...and this time it isn't over college football.

In May 2018, the Michigan Civil Rights Commission issued a statement re-interpreting the Elliott-Larsen Civil Rights Act, the state civil rights law, to cover discrimination based on sexual orientation and gender identity. The interpretative statement, which does not have the force and effect of law, provides that discrimination based on sexual orientation and gender identity are forms of discrimination based on sex. The MCRC issued the interpretative state knowing the state's Attorney General disagreed with that position.

On July 20, 2018, Attorney General Bill Schuette, who is currently running in the primary for governor, fired back at the MCRC in an Attorney General Opinion Letter stating Michigan's civil rights law does not protect LGBT workers from discrimination based on their sexual orientation or gender identity.

The AG Opinion asserts the MCRC did not have the authority to expand the law "because it conflicts with the original intent of the legislature as expressed in the plain language of the act, and as interpreted by Michigan courts." According to the AG Opinion, "[t]he word 'sex' was understood in 1976, when [state civil rights law] was enacted, to refer to the biological differences between males and females, not to refer to the concepts of sexual orientation or gender identify."

The MCRC is not backing down, however. In comments on July 23, 2018, the MCRC indicated it would continue to follow its interpretive statement that the word "sex" in Michigan's civil rights law protects lesbian, gay, bisexual, and transgender workers. The MCRC's position is that as "an independent, constitutionally created and established body," it "is not bound by the opinion of the Attorney General."

### Where does this leave employers in Michigan?

For employers covered by Title VII (those with 15 or more employees), the interpretive statement aligns the state agency with the EEOC. The federal civil rights agency interprets and enforces Title VII's prohibition on sex discrimination as forbidding employment discrimination based on gender identity or sexual orientation. This position has been accepted by a growing number of federal courts as well.

With its interpretation of the Elliott Larsen Civil Rights Act, which covers Michigan employers with one or more employees, the MCRC now brings small employers in the state within the scope of the LGBT non-discrimination requirements. Employers – both large and small – covered by Michigan's Elliott-Larsen Civil Rights Act should understand the MCRC will now accept and investigate claims of LGBT discrimination under state law.

One thing is certain...this dispute about the scope of Michigan's civil rights law will be resolved in court, not on the football field.

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