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Missouri Supreme Court Rules in LGBT Cases

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On February 26, 2019, the Missouri Supreme Court issued two decisions regarding claims brought by LGBT persons alleging discrimination under the Missouri Human Rights Act. In *R.M.A. ex rel. Rachele Appleberry v. Blue Springs R-IV Sch. Dist. et al.*, the Court ruled that a case brought against the Blue Springs School District and Board of Education by a transgender student alleging sex discrimination because he was denied access to the boys' bathrooms and locker rooms, is allowed to move forward. In *Lampley et al. v. Missouri Commission on Human Rights et al.*, the Court held that an employee may demonstrate unlawful sex discrimination under the MHRA through evidence of "sexual stereotyping," meaning sex-based stereotypical attitudes of how a member of the employee's sex should act. The decisions and their possible effect on school districts are discussed in more detail below.

R.M.A. ex rel. Rachele Appleberry v. Blue Springs R-IV Sch. Dist. et al.

Plaintiff R.M.A., a transgender student transitioning from female to male, filed a lawsuit against the school district and board (collectively "defendants") alleging he was discriminated against under the Missouri Human Rights Act (MHRA) because he was not permitted to use the boys' locker rooms or bathrooms. More specifically, R.M.A.'s lawsuit affirmatively alleges his *legal sex* is male and that by denying him access to the boys' bathrooms and locker rooms, the defendants discriminated against him in the use of a public accommodation on the grounds of his sex is violation of the MHRA.

When the case was filed, the defendants moved to dismiss on two grounds: 1) the MHRA does not cover claims based on gender identity and 2) defendants are not "persons" as used in the specific public accommodation section of the MHRA under which plaintiff brought his claim. The circuit court ultimately dismissed the lawsuit for failure to state a claim.

The Missouri Supreme Court reversed the trial court's decision and remanded the case back to the circuit court. In its decision, the Court did not rule specifically whether or not the MHRA covers claims based on gender identity. Instead, the Court held that Plaintiff R.M.A.'s petition had sufficiently alleged the elements of a claim for sex discrimination under the MHRA. When deciding whether to dismiss a case for failure to state a claim at the motion to dismiss stage, which happens in the beginning of a lawsuit, a court must accept the allegations the plaintiff has pled as true. The Court determined R.M.A. had adequately pled the essential elements required to satisfy sex discrimination, namely, that he was denied the full and equal use of the males'

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restroom and locker room, that his male sex was a contributing factor to that denial, and that he was damaged as a result of the denial. Under the majority Court's rationale, even though the plaintiff stated in the lawsuit that he was transgender, he had also alleged he was a legal male, which was enough to meet the pleading requirement and survive a motion to dismiss his claims at this stage in the litigation.

With respect to defendants' second basis for dismissal of the claims, the Court ruled that that school district and school board are "persons" as defined in the definitions section of the MHRA and used in the section of the MHRA that prohibits discrimination in a place of public accommodation.

What this ruling means for school districts:

A transgender student who alleges his legal sex is male, is allowed to proceed with his claim of sex discrimination under the Missouri Human Rights Act against a school district for denying him access to the boys' bathroom and locker room. While the case was allowed to proceed under the aforementioned specific allegations at this stage in the litigation, there are many questions still left unanswered for school districts. Some of those questions may be answered as the case proceeds. In the meantime, school districts should discuss this case and its possible implications at their district with their legal counsel.

Lampley et al. v. Missouri Commission on Human Rights et al.

Plaintiff Harold Lampley filed a "Charge of Discrimination" with the Missouri Commission on Human Rights ("Commission") against his employer, alleging he was discriminated against based on sex and retaliated against. In the factual allegations set forth in the Charge of Discrimination, Lampley stated that he is a gay man and that because he did not exhibit stereotypical attributes of how a male should appear and behave he was subjected to harassment and retaliation at work. He further alleged that other similarly situated co-workers, who were not gay and exhibited stereotypical male or female attributes were treated differently. Lampley's female co-worker Frost also filed a Charge of Discrimination with the Commission, alleging retaliation because of her association with Lampley. The Commission's investigator concluded Lampley's claim of discrimination was based on "sexual orientation" and that "sexual orientation" was not protected by the Missouri Human Rights Act. Thus, the Commission dismissed both Charges of Discrimination. Lampley and Frost filed petitions in the circuit court, asking the court to direct the Commission to issue them notice of right to sue letters allowing them to bring their claims under the Missouri Human Rights Act in court. The circuit court granted summary judgment in favor of the Commission, and Lampley and Frost appealed.

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In reversing the circuit court's decision, the Supreme Court found Lampley did not allege discrimination based on his sexual orientation, but instead, asserted he was discriminated against due to sexual stereotyping. The Court acknowledged that the United States Supreme Court has already held that sexual stereotyping may give rise to an inference of unlawful discrimination upon a member of a protected class and that federal courts have held that the sex stereotyping analysis applies to homosexual people who allege discrimination based on a failure to conform to sex stereotypes. The Court went on to find that regulations established by the Commission already characterize sexual stereotyping as an unlawful hiring practice before it held that an employee who suffers an adverse employment decision based on sex-based stereotypical attitudes of how a member of the employee's sex should act can support an inference of unlawful sex discrimination. Thus, while the Court did not rule that sexual orientation is a viable basis for possible unlawful discrimination under the MHRA, it made clear that sex stereotyping is unlawful. Further, sex stereotyping can serve as the basis of a sex discrimination claim under the MHRA, irrespective of the employee's sexual orientation.

What this ruling means for school districts:

School districts must ensure that employee stereotyping on the basis of sex is prohibited and promptly investigate and address any potential instances of same. Districts should also keep in mind that sex stereotyping could happen among students as well. Potential sexual harassment among students based on sex stereotypes should also be promptly investigated and addressed.

While the two opinions from the Missouri Supreme Court provide some clarity regarding what types of claims are viable under the Missouri Human Rights Act, they also leave open questions regarding same. Should your district have any questions about these decisions, or their applicability in your school, you should consult your legal counsel.