

# Missouri Supreme Court Rules the MHRA's Prohibition Against Sexual Stereotyping Protects Gay and Transgender Employees and Students

March 6, 2019

The Missouri Supreme Court last week issued a pair of decisions highlighting the breadth of the state's prohibition against sex discrimination. The decisions make clear that, although the Missouri Human Rights Act does not expressly prohibit discrimination based on sexual orientation or gender identity, it remains unlawful to discriminate based on sex stereotypes.

In one of the cases, *Lampley v. Missouri Commission on Human Rights*, a man (Lampley) reported workplace discrimination based on sex. In describing the alleged discrimination, Lampley noted that he was gay and did not appear or behave like a stereotypical male. As a result, he claimed, he was harassed at work and received unjustifiably poor performance reviews. Because Missouri law does not expressly prohibit discrimination based on sexual orientation, the Missouri Commission on Human Rights concluded there was no legal violation and terminated its proceedings without issuing a right-to-sue letter. The Missouri Supreme Court ruled the Commission's analysis was in error because Lampley had specifically alleged discrimination due to his non-conformity with sexual stereotypes. In other words, while Lampley's sexual orientation could not support a discrimination claim, his allegations of sexual stereotyping could. The Court directed the Commission to issue a right-to-sue letter to both Lampley and his female coworker, who alleged she was harassed because of her association with him.

The other case, *R.M.A. v. Blue Spring R-IV School District*, concerned a boy who was born female but subsequently transitioned to living as a male and alleged his "legal sex was male." The boy alleged discrimination in public accommodation because his school denied him access to the boys' restrooms and locker rooms. The school justified its decision regarding bathroom/locker room access by arguing Missouri law did not prohibit discrimination based on gender identity, but again the Missouri Supreme Court focused narrowly on the text of the allegations. Because the boy had alleged his legal sex was male, the court ruled he had a claim for sex discrimination. The case was remanded, and the trial court will weigh the evidence regarding plaintiff's legal sex.

In both cases, the court's analysis of the plaintiff's sex discrimination claim was quite perfunctory, amounting to little more than simply confirming that all necessary elements had been alleged. Nonetheless, the results



underscore the viable claims that many individuals may have under the Missouri Human Rights Act even though it does not prohibit discrimination on the specific bases of sexual orientation and gender identity. As the Missouri Supreme Court stated in *Lampley*, it was incorrect to assume that a gay individual has "no possible sex discrimination claim other than one for sexual orientation."

Missouri employers and businesses should continue to be mindful of stereotype-based discrimination in all its forms. It may appear in a more precedented context, like a woman treated differently because she declines to wear dresses and makeup, or in these contexts newly spotlighted by the Court.