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The PHRC Will Now Accept LGBT Discrimination Complaints

Last week, the Pennsylvania Human Relations Commission (PHRC), which enforces Pennsylvania's anti-discrimination law, issued guidance stating that the law covers discrimination based on sexual orientation and gender identity. The PHRC has clarified that the term "sex" as a protected group under the Pennsylvania Human Relations Act (PHRA) and the Pennsylvania Fair Educational Opportunities Act includes LGBT. Therefore, the PHRC will now accept and investigate LGBT discrimination complaints.

The PHRA, 45 P.S. section 951-963, prohibits discrimination based on several protected categories, including sex, in the sectors of employment, public accommodation, housing, and commercial property. In the context of employment, the PHRA applies to private and public employers who employ four (4) or more persons in the Commonwealth of Pennsylvania. The Pennsylvania Fair Educational Opportunities Act, 24 P.S. section 5001-5010 (PFEOA), prohibits discrimination based on certain protected categories, including sex, in the context of secondary education. The PHRC now has stated that it construes the provisions of the PHRA and the PFEOA to include sex discrimination based on sexual orientation and gender identity.

The term "sex" under the PHRA and PFEOA is not defined. In exercising its legislative mandate to construe provisions of the state anti-discrimination law, the PHRC recently issued this guidance interpreting the definition of "sex" to include discrimination based on the following: sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression. Full definitions can be found on the PHRC's website.

Comment: Prior to this announcement by the PHRC, only certain municipalities and states, such as Philadelphia County and New Jersey, included sexual orientation and/or gender identity in the definition of "sex" as a protected group in their anti-discrimination laws. The PHRC's new guidance requires all covered employers, places of public accommodation, housing, and institutions of secondary education to review their policies and practices and to make changes accordingly.

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