

US Supreme Court to Decide Title VII Sexual Orientation/Transgender Discrimination Cases

Labor & Employment Law Update

on April 22, 2019

The United States Supreme Court announced today that it will consider whether Title VII protects workers from discrimination based on sexual orientation. To date, several federal appeals courts have reached different conclusions on this issue. In 2017, the Seventh Circuit was the first to rule that sexual orientation discrimination was a form of sexual discrimination. The Second and Sixth Circuits followed in 2018. But in 2017, the Eleventh Circuit reached the opposite conclusion. And earlier this year, the Fifth Circuit reaffirmed its long standing “binding precedent” that Title VII does not prohibit discrimination on the basis of sexual orientation. This circuit split set up the stage for the Supreme Court to address the issue.

In *Bostock v. Clayton County, Georgia* (consolidated with *Zarda v. Altitude Express, Inc.*, the Second Circuit case), the Supreme Court will decide whether discrimination “because of...sex” within the meaning of Title VII includes discrimination based on sexual orientation. In *R.G. & G.R. Harris Funeral Homes v. EECO*, the Sixth Circuit case, the court will decide whether Title VII bars discrimination against individuals based on their transgender status or sex stereotyping.

In *Bostock*, the plaintiff was fired from his position as child welfare services coordinator in 2013 after joining a gay softball club. The county conducted an internal audit on CASA program funds he managed and found that Bostock allegedly spent CASA funds fees sponsoring his softball team. Bostock alleged that “in May 2013, during a meeting with the Friends of Clayton County CASA Advisory Board, where his supervisor was present, at least one individual made disparaging comments about Bostock’s sexual orientation and identity and participation in the softball league.” A month later, Bostock was fired for “conduct unbecoming of a county employee.” In *Harris Funeral Homes*, the employer fired the plaintiff, who previously presented as a man, when she said she would begin presenting as a woman at work and would adhere to the dress code for women.

Just last year, the Supreme Court declined to address a similar question originating in the Eleventh Circuit in *Evans v. Georgia Regional Hospital*, but additional petitions subsequently followed creating the need for clarity on Title VII. While the Supreme Court is poised to finally address this issue, many states have already enacted protections in anticipation of how the conservative leaning Supreme Court might rule. Should the Supreme Court rule that Title VII does not afford protection, employers should expect a massive onslaught of local and state laws and regulations to counter such a ruling.

Check out our previous articles addressing Title VII and Sexual Orientation/Transgender Discrimination cases:

Sixth Circuit Says Transgender Discrimination is Protected

Seventh Circuit Issues Landmark Decision Holding that Title VII Prohibits Discrimination Based on Sexual Orientation

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