

Are LGBTQ Workers Protected by Title VII's Ban on Sex Discrimination? The Supreme Court Will Decide This Term

By Monica L. Frantz

On October 8, 2019, the United States Supreme Court will hear oral arguments in three individual cases to determine whether LGBTQ workers are protected from employment discrimination under Title VII of the Civil Rights Act of 1964.

Title VII, which prohibits employment discrimination on the basis of race, color, religion, sex, and national origin, does not contain any explicit protections for sexual orientation, gender identity, or transgender status. This past April, the Supreme Court agreed to hear three cases that will determine whether Title VII's prohibition on discrimination "because of sex" includes discrimination on the basis of a person's sexual orientation or gender identity. As the Circuit Courts are currently split on the scope of the term "sex" as used under Title VII, the Court's decisions will have a major impact on federal law as it applies to the workplace.

The three closely-watched cases the Supreme Court is hearing on October 8th are *Altitude Express, Inc. v. Zarda*, *Bostock v. Clayton County*, and *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*. The *Zarda* case involves a skydiving instructor at Altitude Express who told a customer he was gay. The customer later complained to the instructor's employer, and the instructor was subsequently fired. The instructor filed suit against Altitude Express, alleging that he was unlawfully terminated because of his sexual orientation and because he did not conform to male gender stereotypes. After agreeing to rehear the case *en banc*, the Second Circuit ruled that because sexual orientation is a function of sex, it logically follows that Title VII prohibits discrimination based on sexual orientation.

The second case, *Bostock v. Clayton County*, involves a child welfare services coordinator for Clayton County, Georgia, who was fired soon after joining a gay recreational softball league. The employee filed a lawsuit against the County alleging employment discrimination on the basis of sexual orientation. The trial court dismissed the employee's lawsuit for failure to state a claim, concluding that Title VII does not ban discrimination based on sexual orientation. The Eleventh Circuit affirmed. The Supreme Court has consolidated the *Zarda and Bostock* cases to consider the issue of whether Title VII encompasses discrimination based on an individual's sexual orientation.

The third case the Supreme Court will hear is *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*. This case involves a funeral home worker who was fired from her job after she informed the funeral home's owner that she is transgender. The EEOC sued on the employee's behalf, and the Sixth Circuit ruled that the employer engaged in unlawful sex discrimination. The Supreme Court will now determine whether Title VII prohibits workplace discrimination against transgender persons.

Currently, 21 states, the District of Columbia, and two territories explicitly prohibit employment discrimination based on sexual orientation and gender identity. Ohio is not included among the states that provide explicit protections for LGBTQ workers in the employment setting, although several municipalities and counties in Ohio do. The Supreme Court's decisions in the three cases described above, which will likely come in the first half of 2020, may establish new protections for employees under

federal law and, as a result, new responsibilities for employers. If the Court finds that sexual orientation and gender identity are protected under Title VII, employers will need to ensure that their policies and procedures comply with the law.

If you have any questions about this topic or any other labor and employment matter, please contact one of the listed Roetzel attorneys.

Doug Spiker

Practice Group Manager
Employment Services

216.696.7125 | dspiker@ralaw.com

Karen Adinolfi

330.849.6773 | kadinolfi@ralaw.com

Aretta Bernard

330.849.6630 | abernard@ralaw.com

Bob Blackham

216.615.4839 | rblackham@ralaw.com

Michael B. Brohman

312.582.1682 | mbrohman@ralaw.com

Eric Bruestle

513.361.8292 | ebruestle@ralaw.com

Arthur W. Brumett II

216.615.4856 | abrumett@ralaw.com

Monica Frantz

216.820.4241 | mfrantz@ralaw.com

Denise Hasbrook

419.254.5243 | dhasbrook@ralaw.com

Morris Hawk

216.615.4841 | mhawk@ralaw.com

Phil Heebsh

419.708.5390 | pheebsh@ralaw.com

Deirdre Henry

216.615.4823 | dhenry@ralaw.com

Paul Jackson

330.849.6657 | pjackson@ralaw.com

Doug Kennedy

614.723.2004 | dkennedy@ralaw.com

Jonathan Miller

419.254.5273 | JDMiller@ralaw.com

Stephanie Olivera Mittica

330.849.6671 | solivera@ralaw.com

Nancy Noall

216.820.4207 | nnoall@ralaw.com

Nathan Pangrace

216.615.4825 | npangrace@ralaw.com