

Supreme Court to Consider LGBT Rights in the Workplace

Altitude Express v. Zarda

Bostock v. Clayton County, Georgia

R.G. & G.R. Harris Funeral Homes v. EEOC

April 23, 2019

On Monday, April 22 and Tuesday, April 23, 2019, the Supreme Court announced that next term it will rule on whether federal employment discrimination laws protect LGBT employees. The Justices agreed to hear a trio of cases – two alleging discrimination based on sexual orientation and a third claiming discrimination based on transgender status.

In *Altitude Express v. Zarda*, a skydiving company in New York was sued by a former instructor, Donald Zarda, who contends he was terminated because he is gay. Zarda claims the termination violated Title VII of the Civil Rights Act of 1964, which bars discrimination “because of sex.”

The trial court dismissed the case on the basis sexual orientation is not a protected class under Title VII. The Court of Appeals for the Second Circuit reversed, finding that Title VII does apply to discrimination based on sexual orientation because such discrimination “is a subset of sex discrimination.”

In *Bostock v. Clayton County, Georgia*, Gerald Bostock worked as a child-welfare-services coordinator. Bostock claims that after the county learned he was gay, it falsely accused him of mismanaging public money, thus resulting in his termination. Bostock asserts his sexual orientation was the true reason for his termination.

Bostock filed his claim in federal court arguing the termination violated Title VII. The district court dismissed the case on the basis that sexual orientation is not protected under Title VII and the Court of Appeals for the Eleventh Circuit agreed.

R.G. & G.R. Harris Funeral Homes v. EEOC was added to the docket on Tuesday morning. The petition for review was filed by Thomas Rost, owner of a small funeral home in Michigan and a self-described “devout Christian.” In 2007, Rost hired Aimee Stephens who, at the time, identified as a man. Six years later, Stephens informed Rost that Stephens identified as a woman and requested permission to wear women’s clothing. Rost fired Stephens because permitting Stephens to wear women’s clothing would violate the funeral home’s dress code and because Rost would be “violating God’s commands” by allowing Stephens to dress as a woman.

The EEOC filed suit on Stephens’ behalf. Ultimately, the Court of Appeals for the Sixth Circuit ruled in the EEOC/Stephens’ favor. The Supreme Court granted Rost’s petition for review, agreeing to consider whether

Title VII bars discrimination against transgender people based on either their status as transgender or sex stereotyping.

In Wisconsin, sexual orientation is specifically identified as a protected class under state law. While transgender status is not specifically named as a protected class, Wisconsin courts have found discrimination based upon transgender status to constitute prohibited gender discrimination under state law. Under federal law, neither sexual orientation nor transgender status are specifically named as protected classes. Therefore, these cases will determine whether such categories are protected under federal anti-discrimination laws.

We will provide an update next term after these cases are decided. In the meantime, should you have any questions regarding this decision, please contact Joel S. Aziere at jaziere@buelowvetter.com or your Buelow Vetter Attorney.

This Legal Update is intended to provide information only on general compliance issues and should not be construed as legal advice. Please consult an attorney if you have any questions concerning the information discussed in this Legal Update.

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