



June 28, 2019

### LABOR & EMPLOYMENT PRACTICE GROUP

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On April 22, 2019 the United States Supreme Court (the “Supreme Court”) announced it will decide whether the federal civil rights law protects gay, lesbian, and transgender workers from workplace discrimination. One expects the Supreme Court to render a decision by June 2020, which would coincide with the celebration of LGBT Pride which occurs each June.

Currently, Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits discrimination “against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” Additionally, Title VII prohibits an employer “to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.” The Supreme Court will decide the hotly debated issue of whether discrimination on the basis of “sex” includes sexual orientation and/or gender identity.

Specifically, the Supreme Court will hear three cases: *Altitude Express Inc. v. Zarda*, No. 17-1623 (2d Cir.), *Bostock v. Clayton County, Ga.*, No. 17-1618 (11th Cir.), and *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission*, No. 18-107 (6th Cir.). *Altitude Express Inc.* and *Bostock* both addressed whether Title VII protects employees from discrimination based on their sexual orientation.

The Second Circuit Court in *Altitude Express Inc.* found that “sexual orientation is a function of sex and sex is a protected characteristic under Title VII, [therefore] it follows that sexual orientation is also protected.” However, citing 1979 precedent, the Eleventh Circuit in *Bostock v. Clayton County, Ga.* refused to extend Title VII protections finding “[d]ischarge for homosexuality is not prohibited by Title VII.” On a related issue, *R.G. & G.R. Harris Funeral Homes* addressed a separate question of whether Title VII bars discrimination against transgender individuals. In that case, the employee was terminated after she announced she was a transgender woman and started wearing women’s clothing to work. The United States Court of Appeals for the Sixth Circuit ruled in favor of the employee and held Title VII bars discrimination based on gender identity.

While the Supreme Court’s decision will affect LGBT employment rights on a federal level, employers should be aware that New York laws already prohibit discrimination based on sexual orientation and/or gender identity. For example, the New York State and New York City Human Rights Laws each extends protections against workplace discrimination based on sexual orientation, transgender status, gender identity and gender expression.

Therefore, employers must ensure their anti-discrimination policies incorporate protections to their LGBT workforce. You can contact your Meltzer Lippe attorney to ensure your policies are in compliance with the various federal, state and local workplace laws.

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<sup>1</sup> 42 U.S.C. § 2000e-2(a)(1).

<sup>2</sup> 42 U.S.C. § 2000e-2(a)(2).

<sup>3</sup> 883 F.3d 76, 113 (2d Cir. 2018).

<sup>4</sup> 723 Fed.App 723 F. App'x 964 (11th Cir. 2018)

<sup>5</sup> N.Y. Exec. Law § 296(1)(a) (“It shall be an unlawful discriminatory practice . . . [f]or an employer . . . because of an individual’s age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.”).

<sup>6</sup> N.Y.C. Admin Code § 8-107(1)(a)(3) (“It shall be an unlawful discriminatory practice . . . [f]or any employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual orientation, uniformed service or alienage or citizenship status of any person . . . [t]o discriminate against such person in compensation or in terms, conditions or privileges of employment.”).