



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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**“We believe in the ideas of family, mutuality,
the sharing of benefits and burdens
for the good of all, feeling one another’s pain,
sharing one another’s blessing
recognizing that at the heart of the matter
we are bound to each other.”**

-Mario M. Cuomo-

SUPREME COURT HOLDS THAT TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 FORBIDS EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY

On June 15, 2020 the United States Supreme Court by a 6-3 majority issued widely-anticipated decisions and held that Title VII of the Civil Rights Act of 1964 (“Title VII”) forbids employment discrimination on the basis of sexual orientation and transgender identity. The rulings came in two gay rights cases from Georgia and New York and a transgender rights case from Michigan. *Bostock v. Clayton County, Georgia* and *Harris Funeral Homes v. EEOC*. The plaintiff in the Georgia case, Gerald Bostock, was fired from a county job in Georgia after he joined a gay softball team. The New York case involved skydiving instructor named Donald Zarda who died after the litigation began. In the Michigan case, Aimee Stephens was terminated from her job in Michigan two weeks after she told her employer that she was transgender and intended to transition from a male to female.

Justice Neil Gorsuch wrote the majority opinion. He was joined by Chief Justice John Roberts and Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan. The dissenters were Justices Clarence Thomas, Samuel Alito, and Brett Kavanaugh.

Title VII makes it illegal for employers to discriminate because of a person’s sex, among other factors. The legal issue focused on the definition of “sex” in Title VII. The plaintiffs, had argued that discriminating against gay and transgender workers was inherently based on their sex and consequently was illegal. The Trump administration urged the Supreme Court to rule that Title VII does not apply to sexual orientation. Justice Gorsuch opined: ‘An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.’

Alphonso David, President of the Human Rights Campaign said “this is a landmark victory for LGBTQ equality.” Only 21 states in the country have laws that prohibit job discrimination based on sexual orientation. This is a copy of the [decision](#).

EEOC ISSUES NEW COVID-19 GUIDANCE AS WORKERS START RETURNING TO WORK

On June 11, 2020 the United States Equal Employment Opportunity Commission (“EEOC”) issued guidance warning employers not to discriminate against workers over 65 from the workplace by “involuntarily” excluding them because of the increased risk of COVID-19.

Public health officials have warned that people over 65 years old are at an increased risk of severe COVID-19 illness. As the economy reopens across the country, employers have started to adopt new protocols to protect their workers. Some employers have discussed the possibility of letting their younger workers go back to work and gradually let older workers return to work when the COVID-19 pandemic subsides.

The EEOC guidance states that the Age Discrimination in Employment Act (“ADEA”) bars employers from excluding anyone from the workplace because of their age if they want to go back to work. However, employers are free to provide flexibility to workers in the over-65 age pool. Specifically, the EEOC states that the “ADEA does not include a right to reasonable accommodation for older workers due to age. However, employers are free to provide flexibility to workers age 65 and older; the ADEA does not prohibit this, even if it results in younger workers ages 40-64 being treated less favorably based on age in comparison.” The Center for Disease Control has advised employers to provide workers over 65 “maximum flexibility” to protect against COVID-19.

The EEOC also warned employers from excluding pregnant workers from the workplace even if they are motivated by “benevolent concerns.” However, the EEOC said that it is permissible to provide reasonable accommodations based upon the Americans with Disability Act and Title VII as amended by the Pregnancy Discrimination Act.

This is a link to the [guidance](#) from the EEOC. Section H deals with Age issues.

GOVERNOR WARNS BARS AND RESTAURANTS THAT THEY WILL LOSE THEIR LIQUOR LICENSE IF THEY FAIL TO PREVENT CROWDING

On June 14, 2020 Governor Andrew Cuomo warned bars and restaurants that his administration will revoke the liquor licenses at establishments that have large crowds and are in violation of COVID-19 pandemic restrictions. The Governor issued this warning after several videos went viral over the weekend showing large crowds at bars and restaurants.

Under the NY Forward Plan, New York City restaurants are closed except for takeout and bars are also closed except for curbside service. Crowds have developed outside bars as the weather has become warmer. The state has received more than 25,000 complaints about businesses not complying with social distancing guidelines. The State Liquor Authority and a special task force are investigating these complaints.

Governor Cuomo said, “I am not going to allow situations to exist that we know have a high likelihood of causing an increase of the virus.”

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