

Article

Sexual & Gender Discrimination in the Oilfield

07.20.20

ShaleMag.com

The U.S. Supreme Court ruled on June 15, 2020, that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on sexual orientation or gender identity. This momentous, 6-3 decision came in *Bostock v. Clayton County*, in which the plaintiff claimed he was fired because he is gay.

Energy companies already have been a favorite target of plaintiffs' lawyers looking for violations of overtime laws and those same lawyers now have another arrow in their quiver to pursue employment claims against the industry. With layoffs continuing to be high in the oil fields, workers and their attorneys can be expected to look for other means of recourse. This is particularly a concern in the shale industry where it is estimated a third of the jobs will disappear in 2020.

The Bostock Decision

The opinion resolved three related cases: *Bostock v. Clayton County*, *Zarda v. Altitude Express, Inc.*, and *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.* Two of the cases concerned discrimination based on sexual orientation and one dealt with discrimination against a transgendered woman. In all three cases, the employee was fired shortly after revealing he or she was gay or transgender, according to the decision.

Each of the plaintiffs challenged their termination as a violation of Title VII, which makes it unlawful for an employer to make employment decisions (such as hiring, firing, promoting, or transferring) because of the individual's race, color, religion, sex or national origin. Interpreting the statute's reference to "sex," the Supreme Court held, "[a]n 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." In other words, "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

The court also made it clear it does not matter if the employer relied on other factors besides the employee's sex. "If the employer intentionally relies in part on an individual employee's sex when deciding to discharge the employee—put differently, if changing the employee's sex would have yielded a different choice by the employer—a statutory violation has occurred," according to the decision written by Justice Neil Gorsuch.

Practical Effect of sexual and gender discrimination in the oilfield

One of the most serious threats to the financial health and well-being of an organization today is the damage caused by discrimination, harassment and retaliation in the workplace. In 2019, the Equal Employment Opportunity Commission received 23,532 complaints of sex-based discrimination. The EEOC complaints resulted in \$170.7 million of settlements, and that does not include damages obtained through private litigation.

The *Bostock* decision expands Title VII's protections to all LGBTQ employees working for private companies with 15 or more employees. Although many states and corporations already have anti-discrimination policies

protecting sexual orientation and gender identity, the majority of states, including Texas, have no such protections. For companies based in these states, the Bostock decision will have immediate effects.

Employers should review their employment policies, handbooks and training materials to ensure they comply with the Supreme Court's decision. Specifically, companies should ensure sexual orientation and transgender status are included as protected characteristics or added to the definition of "sex." Although the boilerplate nondiscrimination statement that many companies use stating "the company does not discriminate in employment practices or opportunities on the basis of race, color, religion, sex and national origin" now implicitly includes sexual orientation, businesses may want to consider a revision to specifically include sexual orientation and gender identity. In the event sexual orientation and gender identity are excluded under an employer's policies, those policies should be updated immediately.

Additionally, employers should review all policies with an eye toward LGBTQ issues and preventing LGBTQ discrimination in the workplace. For example, companies may adopt gender-neutral restrooms or revise policies regarding gender-specific restrooms to allow transgendered and transitioning employees to use the restroom of the gender with which they identify. Companies should adopt dress code policies that allow transgendered and transitioning employees to dress according to the gender they identify with. Similarly, companies should ensure health care and other benefits, such as parental leave, provide equal access to transgender and homosexual employees. Oil and gas companies that hire employees to work in the oilfield, on pipelines and offshore, must make accommodations for employee living quarters to the extent gender identity issues among their workforce exist. At the same time, care should be taken to ensure employees' privacy.

Training is the key to avoiding LGBTQ discrimination claims including those of sexual and gender discrimination in the oilfield. This is particularly true in the oil fields where the culture is less buttoned down and corporate. As with all discrimination claims, documentation of performance issues is vital, and managers must avoid any behavior or conversations that suggest bias. Since many field managers and employees may not be familiar with LGBTQ issues, we recommend that training include tangible examples of job-related discrimination.

Conclusion

The Bostock decision inevitably will lead to an increase in litigation alleging LGBTQ discrimination. By updating policies and training employees to provide an inclusive workplace, employers can proactively reduce their risk of future claims.

To read the full article, [click here](#).

Primary Contacts



Pooneh Momeni

Houston

713.222.1484

pmomeni@munsch.com

Related Practices

Labor & Employment

Related Industries

Energy