

Baird Holm Labor Law Forum Webinar Series

Session Three

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2020 Case Law Update



Kelli P. Lieurance

EEOC's Fiscal Year 2019 Statistics



- Total discrimination charges
- Increase in harassment?
- Total monetary collections

Sexual Orientation/Gender Identity



- *Bostock v. Clayton County, Georgia*, 590 US ___ (2020).
- **Title VII protects against discrimination on the basis of sexual orientation and transgender status.**

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Effects of *Bostock*

- *Frappied v. Affinity Gaming Black Hawk, LLC* (10th Cir. 2020).
- **Title VII prohibits “intersectional discrimination” against older women**



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Sexual Harassment

- *Lett v. Great E. Resort Mgmt., Inc.* (W.D. Va., 1/24/20).
- **Employer not liable for sexual battery of massage therapist.**



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Age Discrimination

- *Babb v. Wilkie*, 140 S. Ct. 1168 (2020).
- Federal employees must only prove that age was a factor in age discrimination claim, but must prove more to get certain damages.



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Age Discrimination



- *Main v. Ozark Health* (8th Cir. 2020).
- Court does not decide whether termination reason was wise, fair, or even correct, so long as it was truly the reason for separation.

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Disability Discrimination

- *Kelleher v. Fred A. Cook, Inc.* (2d Cir. 2019).
- Associational discrimination does not require accommodation, but Plaintiff may proceed with discrimination claim.

Associational Discrimination



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Disability Discrimination

- *Lopez-Lopez v. Robinson Sch.* (1st Cir. 2020).
- **Requiring employee to receive medical treatment not ADA discrimination.**



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Religious Discrimination

- *EEOC v. United Health Programs of America* (E.D.N.Y. Mar. 6, 2020).
- **“Onionhead” religion pushed by CEO’s aunt created hostile work environment.**



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Ministerial Exception

- *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020).
- **Religious institutions cannot be sued for employment discrimination.**



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Retaliation



- *Scheidler v. Indiana* (7th Cir. 2019).
- **Plaintiff must have sincere good faith belief that she opposed an unlawful practice.**

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FMLA



- *Tatum v. Southern Co. Servs., Inc.* (5th Cir. 2019).
- **Continued inappropriate behavior legitimate, nondiscriminatory reason for separation.**

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FMLA

- *Evans v. Coop. Response Ctr., Inc.* (D. Minn. June 18, 2019).
- **When absences exceed frequency in FMLA certification, ask for recertification!**



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Joint Employment



- *New York v. Scalia* (S.D.N.Y. 9/8/20).
- Court vacates DOL's "joint employer" 4-factor test, and portions related to "vertical" employment relationships.

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Wage and Hour

- *Kenney v. Helix TCS, Inc.* (10th Cir. 2019).
- Employers are not excused from complying with federal laws because of other federal law violations.



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Statute of Limitations

- *Logan v. MGM Grand Detroit Casino* (6th Cir. 2019).
- Statute of limitations of Title VII cannot be contractually shortened.



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Kelli P. Lieurance
klieurance@bairdholm.com
(402) 636-8298

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