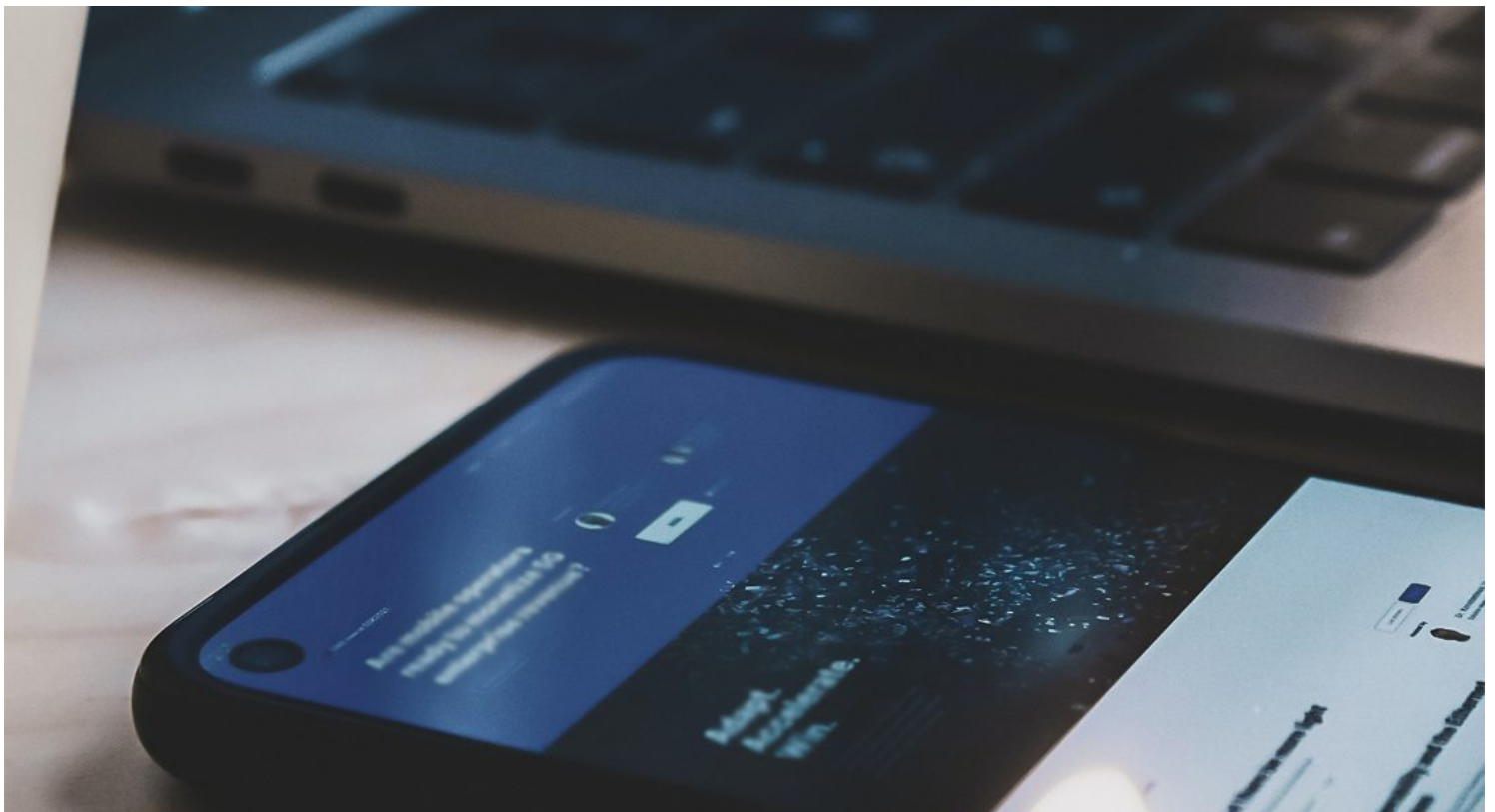


NEWS & INSIGHTS

Supreme Court to Decide Whether Title VII Civil Rights Protections Should Extend to LGBT Employees

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The Supreme Court announced recently that it will hear three cases during its October 2019 Term in an attempt to resolve a split between lower courts as to whether lawsuits alleging employment discrimination based on an employee's sexual orientation or identity are actionable claims under Title VII.

The Equal Employment Opportunity Commission (EEOC), the federal agency charged with enforcing Title VII, takes

the position that sexual orientation discrimination is prohibited under the law. Several courts across the country have agreed with this position. However, under President Trump, the Department of Justice (DOJ) has taken the contrary position noting that, as defined under Title VII, “sex” does not refer to sexual orientation or gender identity. Several courts across the country have also agreed with this position, thus establishing the need for the Supreme Court to weigh in on the issue to establish a uniform interpretation.

Doe v. Parx Casino

The Third Circuit Court of Appeals, which governs appeals of federal court cases in Pennsylvania, New Jersey and Delaware, has previously held that Title VII does not prohibit discrimination based on sexual orientation. The U.S. District Court for the Eastern District of Pennsylvania recently reaffirmed this stance in the matter of *Doe v. Parx Casino*.

Doe v. Parx Casino involved a female table games dealer, who identifies as a lesbian with a “masculine gender expression,” alleged she suffered discrimination and a hostile work environment as a result of derogatory comments by her coworkers. She was fired for alleged “negative interaction with a customer” and subsequently sued the casino claiming that her employment was terminated due to her sexual orientation.

The District Court dismissed her case without prejudice. However, the Court noted that claims of gender stereotyping, rather than sexual orientation discrimination claims, may potentially be actionable under Title VII.

Gender stereotyping is generalizing assigned attributes to men or women and stems from bias or how an individual is perceived. For example, a man who is harassed due to his feminine characteristics could claim gender stereotyping. This differs from discrimination based on sexual orientation, which is when an individual is subjected to harassment based on the gender to which they are attracted.

Impact on Pennsylvania

While sexual orientation discrimination claims are not presently actionable in the federal courts, Pennsylvania employers could still face liability for discrimination under the Pennsylvania Human Relations Act (PHRA). The Pennsylvania Human Relations Commission (PHRC), the state agency charged with enforcing the PHRA, takes the position that discrimination based on an employee’s sexual orientation constitutes unlawful sex-based discrimination.

You can expect additional updates from our team as the Supreme Court hears the cases during its October Term and hands down decisions, bringing more clarity to this complex civil rights question. Saxton & Stump attorneys [Richard L. Hackman](#) and [Stephen J. Fleury Jr.](#) are available to discuss how your business may be impacted by this developing issue and how our [Labor and Employment Law Group](#) can help your organization devise an appropriate plan to mitigate workplace harassment and discrimination.

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