

Will the US Supreme Court extend Title VII Protections to LGBTQ Employees?

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Sexual Orientation and Gender Identity/Expression

- ▶ Title VII of the Civil Rights Act of 1964 prohibits discrimination based on an individual's race, color, national origin, religion and sex.
- ▶ Sexual orientation and gender identity/expression are not specifically identified in Title VII as protected classes and therefore most courts have ruled that those claims are not covered under federal law.



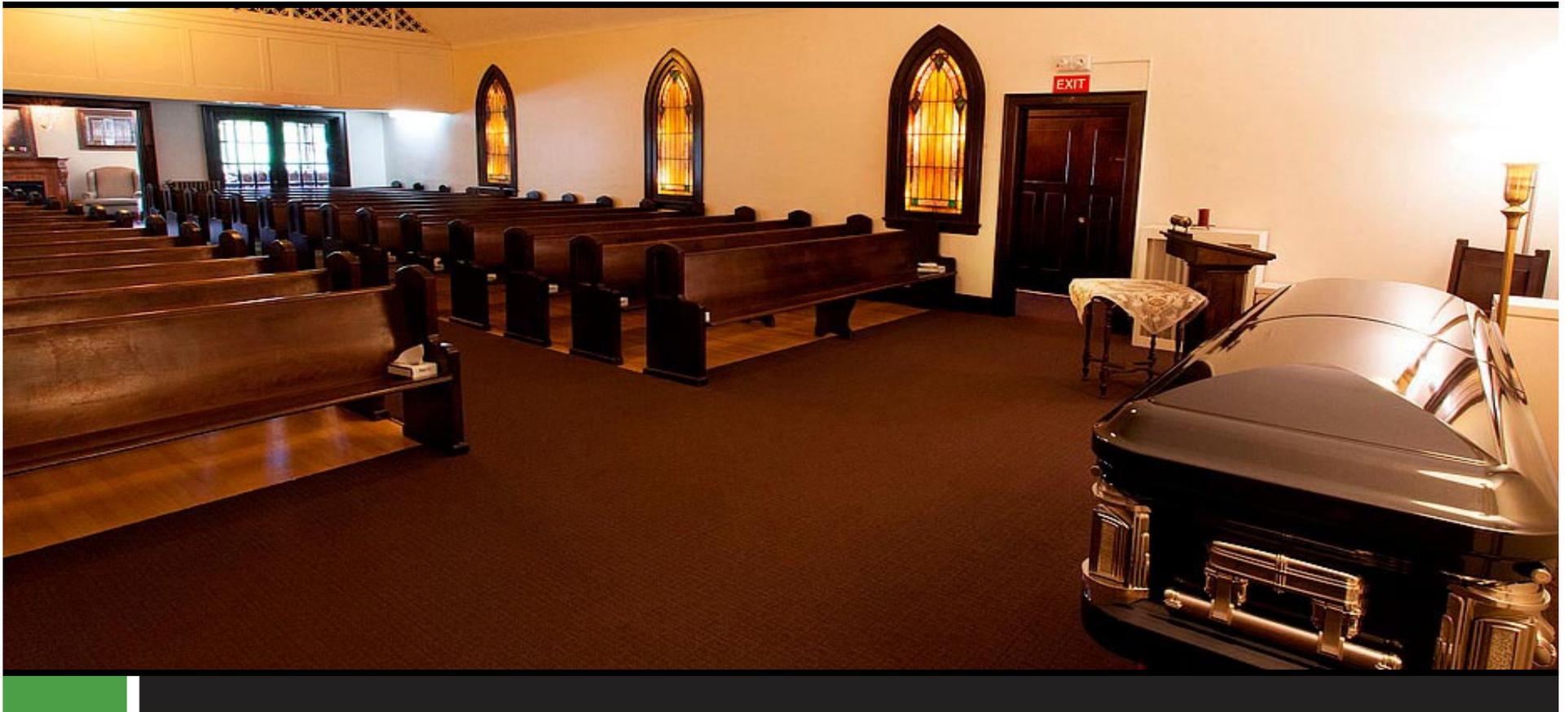
Discrimination Based on Sex

Discrimination or harassment against an employee because the employee does not conform to gender-based expectations, preferences, or stereotypes.

- ▶ Intentionally failing to use the employee's preferred name and gender pronoun
- ▶ Firing an employee because he is planning or has made a gender transition.
- ▶ Denying an employee equal access to a common restroom corresponding to the employee's gender identity
- ▶ Firing a male employee for dating another male employee but not firing a female employee who dates a male employee









The Supreme Court will decide three cases that should establish whether Title VII prohibits discrimination based on sexual orientation or gender identity and expression.

Other Considerations:

- ABA Model Rules of Professional Responsibility
- Cross-jurisdictional application of firm policies.
- Recruiting Eligibility:
 - ABA, AALS, NALP
- Public Relations
 - *See also* ADR and confidentiality provisions during #MeToo)

**“Shocking’ numbers: Half of LGBTQ
adults live in states where no laws ban
job discrimination.”**

Susan Miller, USA TODAY Published 5:00 a.m. ET Oct. 8, 2019 | Updated 4:50 p.m. ET Oct. 8, 2019

States with employment discrimination statutes that include protections for LGBTQ employees.



- ▶ States which include sexual orientation and gender identity or expression: California, Connecticut, Delaware, District of Columbia, Hawaii, Iowa, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Utah, Vermont, Virginia (signed 3/5/20) and Washington.
- ▶ US Territories: Guam and Puerto Rico.
- ▶ States which include sexual orientation only: Colorado, Illinois, Maine, Minnesota and Oregon.
- ▶ Pennsylvania: Pennsylvania Insurance Commission views sexual orientation and gender identity as being covered by “on the basis of sex”.



Other sources...

Local government: counties, cities, municipalities,
etc...

Non-Discrimination Policies Law Firms



EXAMPLE

Miles & Stockbridge is an equal opportunity employer.

We conduct all business without regard to age, race, color, religion, sex, sexual orientation, gender identity or expression, national origin, genetic information, physical or mental disability, marital status, veteran status or any other category protected by state or federal law. This policy applies to all of the terms and conditions of employment, including, but not limited to, hiring, placement, training, compensation, transfer, promotion, leave of absence and termination.

Non-Discrimination Policies Law Schools



EXAMPLE

Non-Discrimination

The University of Maryland, Baltimore and the University of Maryland Francis King Carey School of Law does not discriminate on the basis of race, color, religion, national origin or ancestry, sex, sexual orientation, gender identity or expression, physical or mental disability, marital status, protected veteran's status, or age in its programs and activities. Specifically, Title IX prohibits discrimination on the basis of sex in UMB's programs and activities. UMB will take steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects.