Insights

Part 1: 2020 Case Law Highlights for Employers in Indiana and Beyond

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From the COVID-19 pandemic to the election, a lot has happened in 2020. For employers, staying up to date on developments has become a full-time job. To alleviate some of the burden with staying up to date, this article is one of a two-part series that highlights key employment law cases that may impact employers and provides practical takeaways.

Decisions from the Supreme Court of the United States

Bostock v. Clayton County[1]

Quick Notes:

- Date Opinion was Issued: June 15, 2020
- Topic of Focus: Title VII of the Civil Rights Act of 1964 ("Title VII") and sexual orientation and transgender rights

Brief Background: In *Bostock*, the Supreme Court addressed three consolidated cases pertaining to rights of homosexual individuals and transgender rights. In the title case, Gerald Bostock had been fired for "conduct 'unbecoming' a county employee" soon after joining a gay recreational softball league, despite ten years of award-winning work for his employer[2]. In the second case, Donald Zarda was fired from his position as a skydiving instructor at Altitude Express within days of mentioning that he was gay[3]. Finally, in the third case, Aimee Stephens was fired after informing her employer that she intended to transition from male to female[4]. The Supreme Court granted certiorari to resolve these conflicting decisions out of the Second, Sixth, and Eleventh Circuit Courts of Appeals.

Main Holding: Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits discrimination on the basis of "sex" and "sex" includes an employee's sexual orientation and transgender status. The analysis in the *Bostock* case is explained in greater detail **here**.

Takeaways: Covered employers are prohibited from discriminating against employees on the basis of an employee's sexual orientation or transgender status, unless an exception applies, such as the ministerial exemption.

Our Lady of Guadalupe School v. Morrissey-Berru[5]

Quick Notes:

- Date Opinion was Issued: July 8, 2020
- Topic of Focus: The Ministerial Exception under the Americans with Disabilities Act ("ADA") and the Age Discrimination in Employment Act ("ADEA")

Brief Background: In *Morrissey-Berru*, the Supreme Court addressed two cases involving teachers at Catholic elementary schools and whether the ministerial exception applied preventing the application of the ADA and ADEA to the religious organization's decisions.

Main Holding: The ministerial exception may apply in different circumstances than previously recognized depending on an employee's job functions with a religious organization, which was the case in *Morrissey-Berru* where a teacher fell under the ministerial exception because of the teacher's responsibility in supporting the employer's religious mission. The details of *Morrissey-Berru* are explained further **here**.

Takeaways: For employers that are churches and other religious organizations, it is important to document the expectations for employees who are entrusted with performing duties related to the faith or mission of the religious organization. Further, despite the existence of the ministerial exception, employers should continue to document their reasons for taking any adverse actions against an employee.

Seventh Circuit Court of Appeals Decision

Joll v. Valparaiso Community Schools[6]

Quick Notes:

- Date Opinion was Issued: March 20, 2020
- Topic of Focus: Sex Discrimination under Title VII and Consistent Employment Practices

Brief Background: In *Joll*, the plaintiff, Molly Joll ("Joll") applied for two assistant coaching positions at Valparaiso High School, one for the girls' cross-county team and one for the boys' cross-country team. However, even though she was well-qualified, she was not selected for either position. In both instances, a younger male was hired. After varying reasons were offered for the School's decisions, Joll brought a claim under Title VII and the ADEA; however, the Title VII argument was the only issue heard on appeal from the district court's grant of summary judgment.

Main Holding: The Seventh Circuit Court of Appeals found Joll overcame her burden on summary judgment by providing evidence of inconsistent reasoning, which, in the aggregate, was sufficient to allow a reasonably jury to infer that the School intentionally discriminated against her. The *Joll* case is explained in further detail **here**.

Takeaways: The *Joll* case provides a lesson learned for employers when it comes to consistency in communicating employment decisions to avoid discriminatory practices or the appearance of discriminatory practices. Additionally, it reinforces the importance of employers having well-documented criteria for job openings against which the employer can objectively assess job candidates.

Up Next

In the next article, we will focus on additional cases from the Seventh Circuit Court of Appeals touching further on religion under Title VII, the ADA, the FMLA, and more.

If you have questions about how these cases affect your business or other employment-related questions, please contact any other member of the Krieg DeVault LLP **Labor and Employment Law Team**.

[1] *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020).
[2] *Id.* at 1738.
[3] *Id.*
[4] *Id.*
[5] *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 207 L. Ed. 2d 870 (2020).
[6] *Joll v. Valparaiso Community Schools*, 953 F. 3d 923 (7th Cir. 2020).