

PUBLICATION

First Texas Court of Appeals to Follow *Bostock* Ruling

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Nine months after the United States Supreme Court's historic decision in *Bostock*, the Texas Fifth Circuit Court of Appeals had to decide whether the interpretation of Title VII's language in protecting LGBTQ employees also applied to the state's anti-discrimination statute, the Texas Commission on Human Rights Act (TCHRA) in *Tarrant County College Dist. v. Sims*.

As detailed in this [Baker Donelson Alert](#), on June 15, 2020, the Supreme Court expanded the longstanding scope of that protection in a 6-3 historic [decision](#) that sexual orientation and gender identity are also protected under Title VII of the Civil Rights Act. Title VII prohibits discrimination based on race, color, national origin, religion, sex, and creed, but sexual orientation and gender identity are not explicitly mentioned in Title VII's statutory language as are these other protected classifications. Proponents argued that such classes should be included because Title VII prohibits discrimination "because of sex," and the Court agreed. Specifically, the Court held that "an 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." Just like Title VII, the TCHRA prohibits discrimination based on race, color, national origin, religion, and sex, but sexual orientation and gender identity are not explicitly mentioned as a protected category.¹

Background

In November 2019, Amanda Sims sued her employer, Tarrant County College District, claiming that she was discriminated against due to her sexual orientation and pled facts alleging a violation of the Texas Whistleblower Act and the Texas Constitution. At the time Sims filed her action, the *Bostock* case had not been decided. Interestingly, the employer filed a plea to the jurisdiction and motion to dismiss Sims' claims arguing that the TCHRA provided the exclusive remedy for a public employee's discrimination and anti-retaliation claims. Sims argued that her claim was not preempted by the TCHRA because the statute did not prohibit sexual orientation discrimination.

At trial, the employer argued that Sims' claim of being discriminated against on the basis of her sex and gender stereotyping was covered under the TCHRA, but recognized that no Texas court had ruled on the issue of whether the TCHRA protected her status of sexual orientation. On February 2020, the trial court denied the employer's plea to the jurisdiction, holding that the parties agreed that TCHRA does not include prohibition against sexual orientation discrimination or retaliation for reporting such discrimination. The court noted no authority was offered that the type of harm claimed by Sims was the type of harm TCHRA was enacted to redress or the type of harm Texas courts have held is made unlawful by the statute.

Appeal Decision

On appeal, the employer continued to argue that the TCHRA provided the exclusive remedy for Sims' claims. The court noted that one of the general purposes of the TCHRA is to "(1) provide for the execution of the policies of Title VII of the Civil Rights Act of 1964 and its subsequent amendments." Tex. Lab. Code § 21.001(1). Citing a Texas Supreme Court decision, the court further noted that the TCHRA was "enacted to address the specific evil of discrimination and retaliation in the workplace," as well as to coordinate and conform with federal anti-discrimination and retaliation laws under Title VII. See *Prairie View A&M Univ. v. Chatha*, 381 S.W.3d 500 (Tex. 2012).

The court recognized that both Title VII and the TCHRA contain analogous statutory language in that both did not have any specific reference to sexual orientation or gender identity. Notwithstanding a lack of specific reference therein, the court noted the *Bostock* opinion held that Title VII's prohibition on discrimination "because of...sex" prohibits an employer from failing or refusing to hire or from firing an individual for being homosexual or being a transgender person. In order to reconcile and conform the TCHRA with federal anti-discrimination and retaliation laws under Title VII, the court concluded that it must follow *Bostock* and read the TCHRA's prohibition on discrimination "because of ...sex" as prohibiting discrimination based on an individual's status as homosexual or transgender person. As such, Sims' claims were now properly preempted by the TCHRA as it offered the relief requested.

Takeaway

This decision provides state-level protections for Texas LGBTQ workers. Employers should be mindful that courts in other states could follow the *Bostock* ruling in interpreting state anti-discrimination laws if they have not done so already. Employers need to ensure their policies include protections consistent with these decisions. Employers need to also take the same steps required to maintain a workplace free of discrimination and harassment based on an employee's LGBTQ status. If you have any questions on this issue, please contact the author or any member of Baker Donelson's [Labor & Employment Practice Group](#) for more information or assistance.

¹ The TCHRA also prohibits discrimination on the basis of age and disability, which federal law protects under the Americans with Disabilities Act and the Age Discrimination in Employment Act.