

10-12-20 1st Rdg
10-28-20 2nd Rdg

VILLAGE OF ELMORE

ORDINANCE NO. 09-20

**AN ORDINANCE AMENDING THE VILLAGE OF ELMORE
EMPLOYEE HANDBOOK TO ADDRESS
LEGAL REQUIREMENTS AND
TO CHANGE THE HIRING PROCESS
TO MAKE THE PROCESS MORE EFFICIENT**

WHEREAS, the State Auditor's Office has recommended certain changes in the Village's credit card policy; and

WHEREAS, the United States Supreme Court in the case of *Bostock v. Clayton County* (decided June 15, 2020) created new protected employee classes related to sexual orientation and gender identity; and

WHEREAS, the hiring process described in section 5.6 does not provide for the receipt of less than two applicants for an open position, and said process may be made more efficient by the department head collecting all applications instead of the Fiscal Officer,

Now, THEREFORE, be it ORDAINED by the Council of the Village of Elmore, Ohio that:

Section 1. Section 14.1.4 of the Village of Elmore Employee Handbook, hereinafter "Handbook", is amended to the following:

"14.1.4 Credit Card/Purchase Cards

Use of Village credit cards and retail credit
shall be in accordance with Ordinance No. 08-20
which is attached as Appendix A"

Section 2. In accordance with the U. S. Supreme Court decision in *Bostock v. Clayton County*, protected category, protected group, or categories protected as those terms are used in the Handbook, including at sections 2.2 equal Employment Opportunity and 8.1.1 Harassment/Bullying, do hereby include sexual orientation and gender identity. Furthermore, section 10.1.1 of the Handbook is amended at the fifth bullet point to the following:

“Be appropriately dressed and groomed for the
job and gender the employee identifies with.”

Section 3. Section 5.6 Hiring Process of the Handbook is hereby amended by adding subsection 11 at the end thereof. Subsection 11 follows:

“11. If there is only one applicant for an open position,
only that single applicant shall proceed
through the hiring process outlined above.”

Section 4. Subsection 3 of section 5.6 Hiring Process of the Handbook is hereby amended to:

“3. The relevant department Head will
collect all applications.”

Section 5. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements of the Village of Elmore and the State of Ohio.

Section 6. This Ordinance shall be in full force and effect from the earliest time allowed by law.

Votes:

To pass Yeas 6 Nays 0

Date: 11/9/2020 *Quinton J. Jackson*
PRESIDENT OF COUNCIL

Approved: *Richard E. Clark* Attest: *Shari Hayes*
MAYOR CLERK

U.S. Supreme Court LGBTQ Decision

What Townships Should Do in the Wake of the Decision that Discrimination Under Title VII of the Civil Rights Act Includes Sexual Orientation and Gender Identity

Brad Bennett

On June 15, 2020, the U.S. Supreme Court, in a 6-3 decision, ruled that workplace discrimination because of an individual's sexual orientation or gender identity is unlawful discrimination "because of sex" under Title VII of the Civil Rights Act of 1964.

The case, *Bostock v Clayton County*, was brought on behalf of three individuals who claimed they were discriminated against for being LGBTQ+. The lead plaintiff Gerald Bostock claimed he lost his job as a child welfare worker in Clayton County, Georgia, for being gay. Another plaintiff, Donald Zarda, who was a skydiving instructor, claimed he was dismissed because he was gay. The third plaintiff, Aimee Stephens, asserted dismissal from a Michigan funeral home after coming out as transgender.

The employers in *Bostock* argued that Title VII, as it was written, did not intend to provide protection to employees who had been discriminated against because of their sexual orientation and/or gender identity. Therefore, the employers argued, it was up to Congress to amend Title VII if they wanted these categories covered under federal discrimination law. The U.S. Department of Labor intervened in the case to agree with the employers' analysis of Title VII while the federal Equal Employment

Opportunity Commission, which enforces anti-discrimination law, previously argued that Title VII included gender identity and sexual orientation.

Judge Neil Gorsuch, who wrote the Supreme Court Opinion, said making a decision about an employee based on gender identity or sexual orientation also takes "sex" into account, which makes it unlawful. He wrote: "It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." Title VII, in turn, makes discrimination "because of sex" unlawful.

Judge Gorsuch continued, "[c]onsider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague."

"By discriminating against homosexuals, the employer intentionally penalizes men for being attracted to men and women for being attracted to women. By discriminating against transgender persons, the employer unavoidably discriminates against persons with one sex identified at birth and another today."

The Supreme Court noted that its decision addresses only discrimination under Title VII. It does not address other issues involving sexual orientation and gender identity, such as bathroom and locker room issues, religious freedom issues, and healthcare issues.

A Brief History Of Discrimination "Because Of Sex" Under Title VII

Title VII bars discrimination against employees because of race, color, religion, national origin, and sex. What conduct constitutes discrimination "because of... sex" has expanded over the years. For example, during the first 20 years of the Act, federal courts interpreted "sex" to only prohibit discrimination "against women because they are women and against men because they are men."

During the late 1980s, however, the U.S. Supreme Court began to broaden sex discrimination under Title VII. First, finding in 1986 that sexual harassment was a form of impermissible sex discrimination. See *Meritor Savings Bank v. Vinson*. Then, in 1989, the Court found that sex stereotyping also was a means of proving sex discrimination. See *Price Waterhouse Coopers v. Hopkins*.

("U.S. Supreme Court..." continued on page 24)

Townships should immediately review and update their written employment policies and handbooks to ensure compliance with the Bostock decision.

In recent years, federal courts struggled with the application of Title VII's prohibition against sex discrimination to the LGBTQ+ communities. For Ohio, this began back in 2004, when the 6th Circuit Court of Appeals (with jurisdiction over all of Ohio, Michigan, Kentucky, and Tennessee) applied the "sex stereotyping" concept from the above *Price Waterhouse*

case in order to find that discrimination based upon an employee being transgender was impermissible under Title VII. See *Smith v. City of Salem*. "Sex stereotyping", essentially, is treating someone disparately because they do not act, or behave, in the way a person believes a "man" or "woman" should act.

Therefore, since 2004 in Ohio, "sex stereotyping" has been the avenue that the LGBTQ+ community has used in order to state a claim under Title VII. Therefore, for example, an employee's legal complaint stating that they were fired for being homosexual, without more, would be met with the defense of "failure to state a claim upon which relief can be granted" based upon the *Salem* case. *Bostock*, however, changes this landscape in Ohio as the LGBTQ+ community no longer has to rely on evidence of sex stereotyping in order to state a claim of discrimination or harassment under Title VII.

What Should Townships Do To Ensure Compliance With Bostock?

Townships should immediately review and update their written employment policies and handbooks to ensure compliance with the *Bostock* decision. This will include a review of the township's EEO policy, non-discrimination policy, harassment policy, and harassment-complaint policy to ensure that sexual orientation and gender identity are included as protected categories.

Further, it is a good idea for townships to conduct a review of dress code policies to ensure that transgender and transitioning employees are permitted to follow the dress code of the gender that they identify with, rather than their biological sex.

Finally, townships should take this time to provide updated discrimination and harassment training to employees - particularly for department heads, managers and human resources individuals who are involved with hiring, promotion, discipline, and discharge - to ensure they are aware that sexual orientation and transgender status are protected categories and cannot form the basis of any employment decisions. ■

about the author



Brad E. Bennett is an attorney with Bricker and Eckler LLP. Brad is certified as a specialist in labor and employment law by the Ohio State Bar Association and assists public employers, including townships, with human resources compliance, collective bargaining, employment law, litigation and related training. If you have questions, you can reach him at 614-227-4849.



These products qualify for the SB 310 funding

WE KNOW CLEAN!

The EZ Electrostatic Disinfecting Mist Sprayer exhibits advanced disinfectant application performance. Far spraying distance, high atomization density and strong electrostatic adsorption. Battery operated with in built detachable battery pack, the sprayer ensures for convenient, effective and efficient spraying of disinfecting and sanitizing agents.



EZ Electrostatic Sprayer

VitalOxide

**Kills COVID-19
EPA Registered
Hospital Grade
5 Log Kill
No PPE Needed**

**Let us help you with your disinfection needs.
Our EZ Electrostatic Sprayer and VitalOxide make this task quick and easy!**