



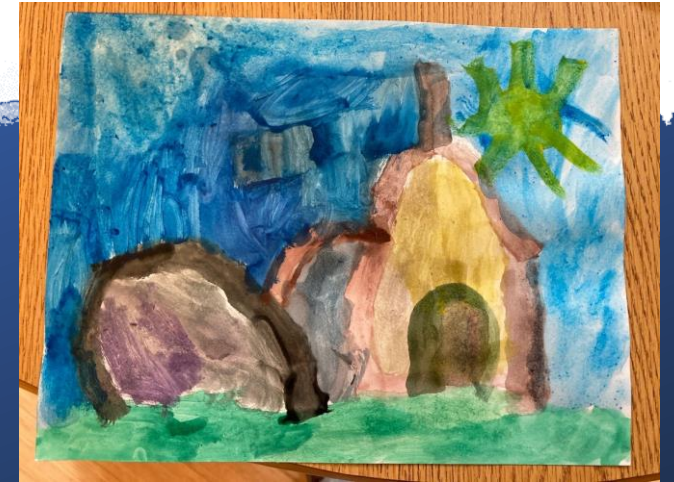
Creating a Transgender Inclusive Workplace

Vermont League of Cities and Towns
Legal Update

July 13, 2022

Who I Am- Emily Chamberlain Adams

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(802) 828 3657 (Civil Rights)



- She/Her/Hers
- Grew up in Goshen, VT
- Lives in Duxbury with two young kiddos
- Former private practice employment attorney
- ~5 years in current role – AAG Civil Rights Unit Vermont AGO

Role of the
AGO – Civil
Rights Unit

- **Educate**
- **Investigate**
- **Enforce**
- **Protect**

[Pride Center of
Vermont- Education
Page](#)

[GLAAD Media
Reference Guide](#)

Self
Education-
where to
start?



Vocabulary

- **Sex** – physical differences between male and females generally biologically assigned at birth.
- **Sexual Orientation** – Self identity in terms of who a person is attracted to romantically. Different from gender identity.
- **Gender Identity** – A person's sense of who they are in relation to gender; gender identity may or may not be aligned with a person's sex assigned at birth. Gender identity focuses on how a person identifies themselves, not how others may perceive them.
- **Transgender** – Generally used as an umbrella term to refer to all people whose gender does not align with the gender they were assigned at birth.

Vocabulary

- **Cisgender-** a person who identifies with the gender they were assigned at birth; gender assignment is connected to sex assignment at birth.
- **Gender Expression-** the way a person presents themselves that may signify or suggest gender within their culture(s).
- **Non-binary** – a spectrum of gender identities that fall outside of the gender binary, i.e. that area not exclusively masculine or feminine. Some non-binary people identify as transgender and some do not.

Vermont Law- VFEEPA

- Race
- Color
- Religion
- National origin
- **Sex***
- **Sexual orientation (1992)**
- **Gender identity (2007)**
- Ancestry
- Place of birth
- Age
- Crime victim status
- Disability

Prohibited Conduct

- Law forbids discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, etc.
- Forbids harassment based on any of the protected categories
- Forbids retaliation against employee who makes a good faith complaint of discrimination, or participates in and investigation regarding same

Vermont Law- Other Protections

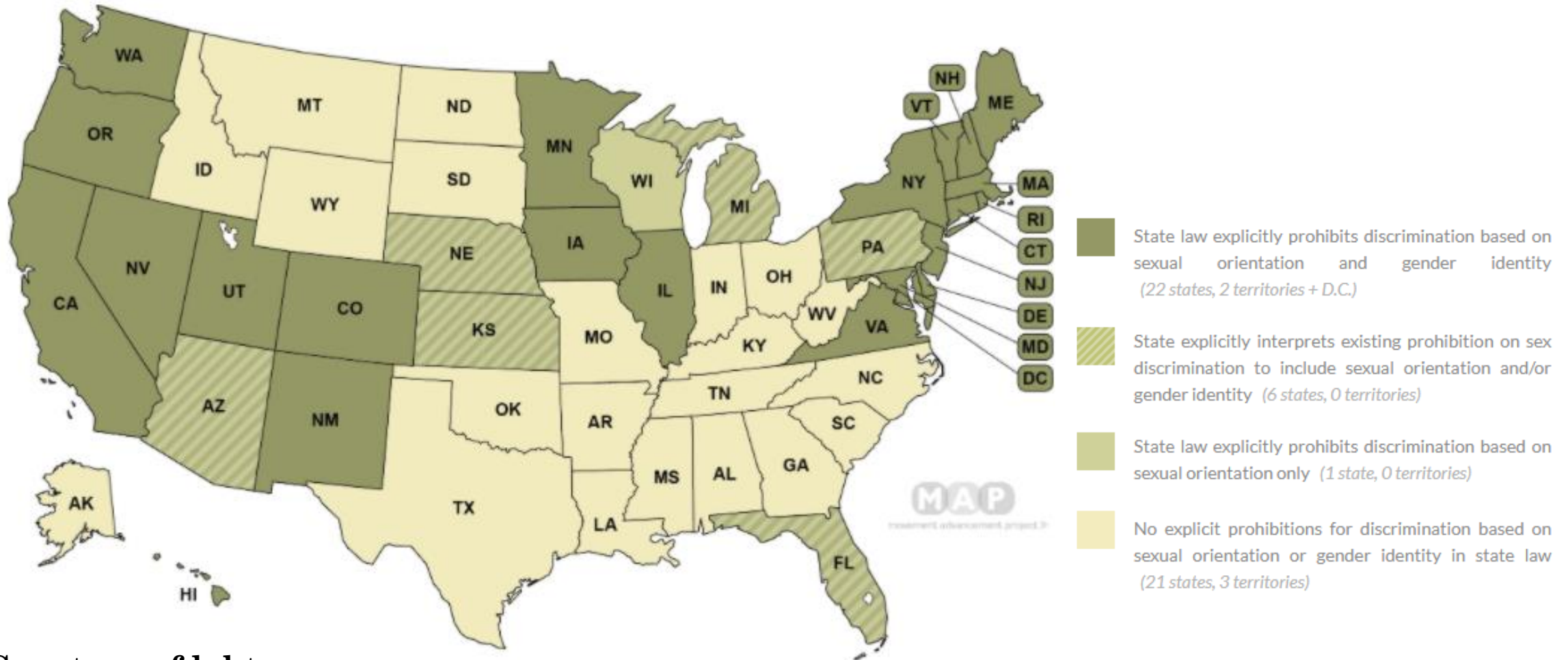
- Insurance coverage for medically necessary gender affirming care
- Gender neutral bathrooms
- Hate crimes
- Ban on Gay/Trans panic defense in criminal cases
- Expanded sexual harassment laws

Federal Law

- Title VII Protections: Race, Color, Religion, **Sex**, National Origin (15+ employees)
- Prior to 2020- open question as to whether “sex” included gender identity & sexual orientation
- Sex stereotyping claims
 - Price Waterhouse v. Hopkins, 109 S.Ct. 1775 (1989)
- Macy v. Holder- “we conclude that intentional discrimination against a transgender individual because that person is transgender is, by definition, discrimination “based on . . . sex”
 - EEOC Decision– 2012



State Laws Prior to Bostock



Courtesy of lgbtmap.org

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BOSTOCK *v.* CLAYTON COUNTY, GEORGIA

**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT**

No. 17–1618. Argued October 8, 2019—Decided June 15, 2020*

Bostock v.
Clayton
County,
Georgia



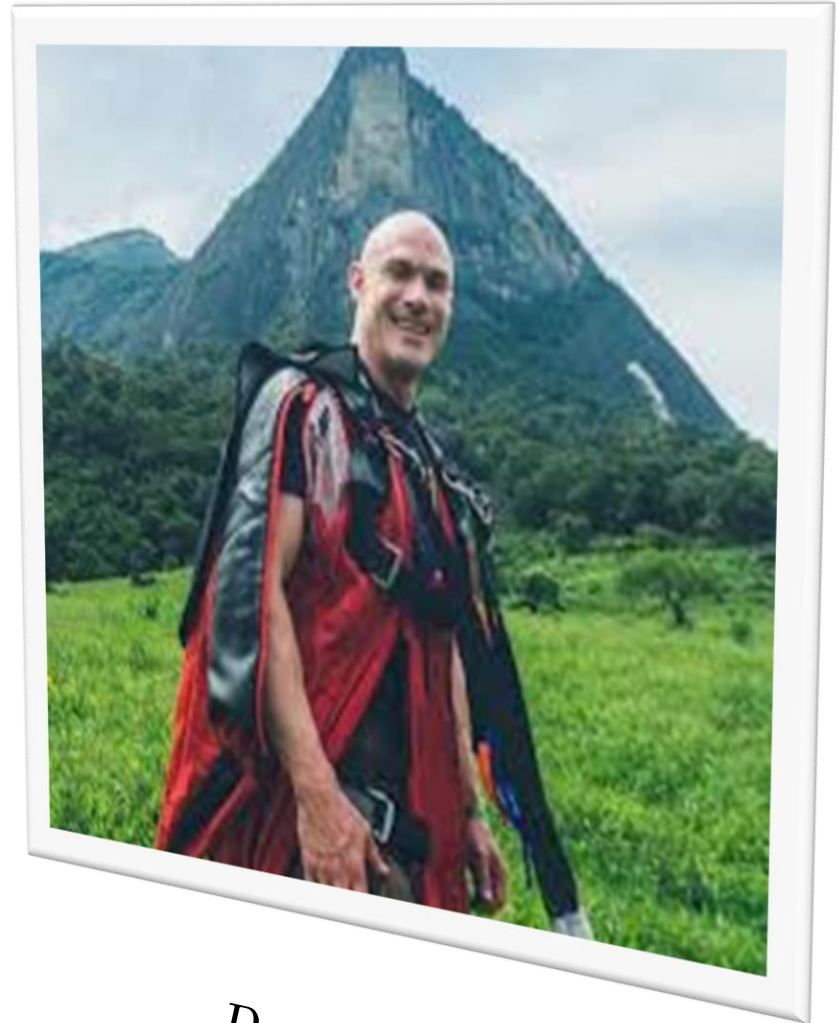
R.G. & G.R.
Harris Funeral
Homes Inc.

v.
EEOC



Aimee Stephens

Zarda v. Altitude Express



Donald Zarda

SUPREME COURT DECISION

“An employer who fired 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. Those who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result. But the limits of the drafters' imagination supply no reason to ignore the law's demands. Only the written word is the law, and all persons are entitled to its benefit.”

EEOC CELEBRATES PRIDE MONTH

Civil Rights for LGBTQI+ Workers

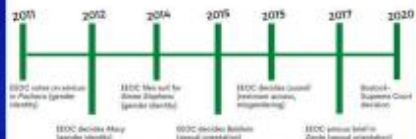
The EEOC enforces Title VII, which prohibits sexual orientation and gender identity discrimination in any aspect of employment, including hiring, firing, and any other term or condition of employment.

THE EEOC IS A LONG TIME CHAMPION OF CIVIL RIGHTS FOR LGBTQI+ WORKERS

2011

In 2011, the EEOC voted for the first time to recognize that discrimination against someone for being transgender is sex discrimination.

LEGAL TIMELINE



Here's a look at a few other significant EEOC actions in defense of a person's right to be free from employment discrimination based on their sexual orientation or gender identity.

BETWEEN FISCAL YEARS 2017 AND 2021



The EEOC received more than 9,000 charges of sexual orientation or gender identity-based discrimination in the workplace.

MONETARY RELIEF



Significant increases in monetary relief since fiscal year 2017 demonstrate employer recognition that discrimination against LGBTQI+ individuals should not be tolerated.



EEOC SOGI Guidance

Misgendering –
Milo v.
CyberCore
Technologies,
LLC
(D. Md., Sept 14,
2019)

- Held- sporadic references to transgender individual by incorrect pronoun, without more, not sufficient for **hostile work environment** under Title VII
- Note- Pre-Bostock, also southern, more conservative circuit

Misgendering – Doe v. Triangle Donuts 472 F. Supp. 3d 115 (E.D. PA 2020)



- She/her
- Coworkers regularly misgendered her despite her requests for them to stop
- Managers and customers refused to use correct pronouns
- Coworker verbal harassment
- Management did not let her wear makeup or nail polish
- Found that this was sufficient for a **hostile work environment** claim under Title VII- based on sex



Misgendering – Jazz Lyles v. Nike (Oregon 2019)

- They/them/their
- Informed Nike they were transgender and identified pronouns
- Nike failed to intervene or investigate their concerns
- Lyles alleged was repeatedly misgendered, and “because Nike had no policies in place, the burden was improperly placed on [Jazz] to educate their coworkers” about pronouns and misgendering

Misgendering- EEOC Guidance

- Honest mistake likely does not rise to the level of harassment
- However, if misgendering intentional and repeated, can give rise to hostile work environment harassment claim
- www.eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination
- Consistent with State of Vermont Civil Rights Unit enforcement
- Subject of pending lawsuit by State of Texas

Vermont- Gender Neutral Bathrooms



- Took effect July 1, 2018
- All single-user bathrooms in public buildings or places of public accommodation must be available to persons of any gender
- Enforced by Department of Public Safety Fire Safety Division and Vermont Human Rights Commission
- [HRC Guidance](#)

Bathrooms- EEOC Guidance



- Position: employers may not deny an employee equal access to a bathroom, locker room, or shower that corresponds to the employee's gender identity.
- In other words, if employer has separate facilities for men and women, all men (including transgender men) should be allowed to use same facilities.
- [2013 EEOC Decision](#)

Bathrooms- Hobby Lobby v. Somerville (2021)



- She/her
- Transitioned while employed by HL
- Obtained female SS card, driver's license, both showing her as female
- Despite this, not allowed to use women's restroom
- Illinois- HRC found Hobby Lobby violated law by not allowing her to use women's restroom, awarded Somerville \$220,000
- Hobby Lobby appealed- arguing her sex was still male- dispute is over definition of "sex"

Best Practices

- Ensure non-discrimination and harassment policies include gender identity and sexual orientation
- Ensure sexual harassment policies are updated based on 2018 Vermont changes
- Educate yourself on vocabulary and pronouns
- Encourage communication around pronouns
- Consider making all policies and communications gender neutral
- Bathrooms – compliance with Vermont law
- **Lead by example**

Enforcement

- Vermont Attorney General's Office Civil Rights Unit 802 828 3657, ago.civilrights@vermont.gov
- EEOC, Boston Area Office publicportal.eeoc.gov; 1-800-669-4000

