Interpreting the Idaho Human Rights Act

ISB Employment and Labor Law Section

November 29, 2023

Douglas A. Werth | Lead Deputy Attorney General
Labor Unit | General Counsel & Fair Hearings Division
Office of the Attorney General | State of Idaho
O: 208-332-3570 Ext. 4210
Email: doug.werth@labor.Idaho.gov

Disclaimer

The views presented here are my own and should not be attributed to the Office of Attorney General or the Idaho Human Rights Commission.

Interpreting the Idaho Human Rights

- Boilerplate – Federal and Idaho cases
- *Bowles v. Keating* (1979)
- FEPA Deferral Status
- Model Anti-Discrimination Act (1966)
- Rules of Statutory Construction
- State Court Interpretations: *Nassar* and *Bostock*
- The IHRA and the ADAAA

Federal Boilerplate

"The analysis of this claim is *identical in all respects* to the analysis of his Title VII claim. . . Idaho courts look *to federal law for guidance* in the interpretation of the state provisions."[1]

"The Idaho Supreme Court has held that the *same legal standards* applicable in Title VII cases govern actions under the Idaho Human Rights Act."[2]

"The '*same standards* apply under federal and Idaho law' for discrimination claims raised under the ADA and the Idaho Human Rights Act."[3]

Idaho Boilerplate

"Federal law guides this Court's interpretation of the IHRA."[1]

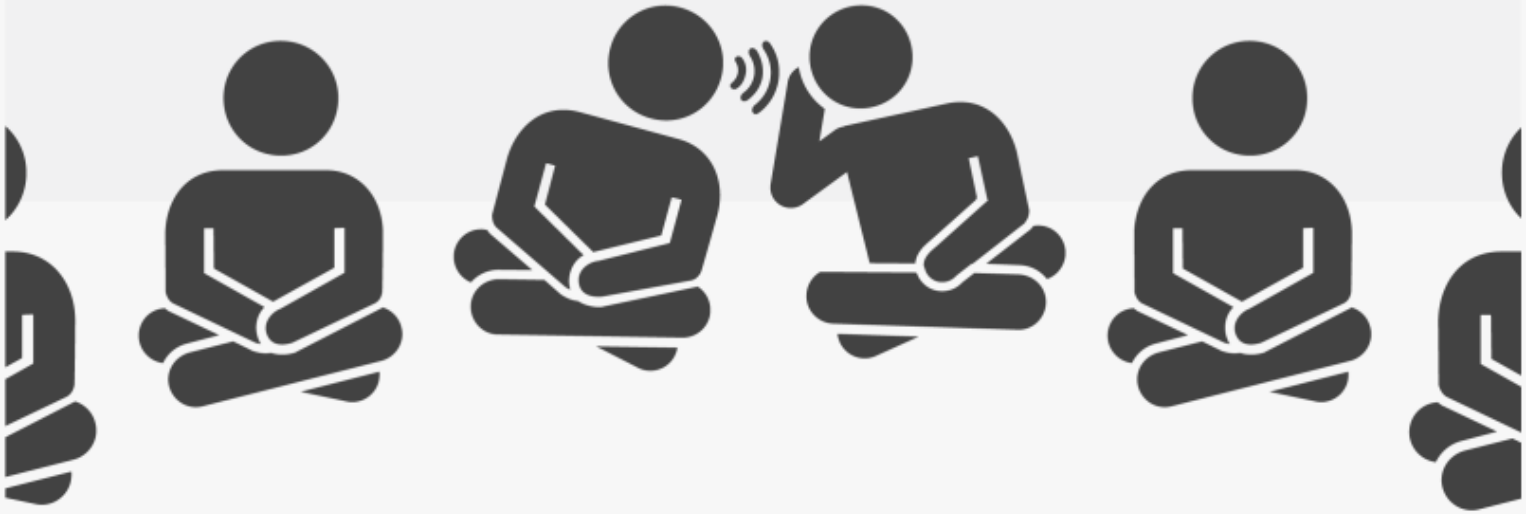
"The IHRA's legislative intent permits Idaho courts to reference federal law in construing state provisions."[2]

"Federal case law under Title VII, 42 U.S.C. s 2000e-2(a), is instructive as to the necessary quantum of proof and the applicable standards for adjudication in sex discrimination cases."[3]

Smith v. Bd. of Commissioners of Louisiana Stadium & Exposition Dist., 385 F. Supp. 3d 491, 507–08 (E.D. La. 2019)

Based on the similarities between the LHRA and federal antidiscrimination statutes and the Louisiana legislature's explicit reference to federal antidiscrimination law in the LHRA's statement of purpose, the Court holds the LHRA incorporates the definition of disability discrimination found in Title III of the ADA. The Court applies the ADA definition to Plaintiff's LHRA claim against SMG.

Bowles v. Keating, 100 Idaho 808, 812, 606 P.2d 458, 462 (1979) (plurality)



"We therefore adhere to and are guided by the quantum of proof and standards promulgated in discrimination cases arising under Title VII."

Dicta and *Bowles v. Keating*

Buck v. St. Clair, 108 Idaho 743, 745, 702 P.2d 781, 783 (1985) (Bistline, J.)

"We believe that for board-certified specialists, the local standard of care is equivalent to the national standard of care."

Grimes v. Green, 113 Idaho 519, 521–22, 746 P.2d 978, 980–81 (1987)

"Plaintiffs-respondents argue. . . that in cases alleging malpractice of board-certified physicians, *Buck* establishes a national standard by which the actions of all such physicians will be gauged and measured, and hence there can be no local deviation from such a national standard. . . . [W]e perceive some of the language of *Buck* as lending some support to respondents' assertions. However, that language is *dicta,* was not necessary to the narrow holding of *Buck,* i.e., the competence of a witness to testify, and we now disavow that *dicta.*"

O'Dell v. Basabe, 119 Idaho 796, 811, 810 P.2d 1082, 1097 (1991)

We are guided in our interpretation of the Idaho statute by federal law. The first section of the Idaho Human Rights Act declares that its purpose is to "provide for the execution within the state of the policies embodied in the federal Civil Rights Act of 1964, ... and the Age Discrimination in Employment Act of 1967...." I.C. § 67–5901. This Court has previously determined that the legislative intent reflected in I.C. § 67–5901 allows our state courts to look to federal law for guidance in the interpretation of the state provisions. Hoppe v. McDonald, 103 Idaho 33, 644 P.2d 355 (1982); Bowles v. Keating, 100 Idaho 808, 606 P.2d 458 (1979).

Idaho Code § 67-5901(1)

The general purposes of this chapter are:

(1) To provide for execution within the state of the policies embodied in the federal Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended, and Titles I and III of the Americans with Disabilities Act.

Worksharing and Deferral Status – 42 U.S.C. § 2000e-5(c)

"In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, *no charge may be filed under subsection (a)1 by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law*, . . ."

TN § 4-21-101. Purpose

(a) It is the purpose and intent of the general assembly by this chapter to:

. . .

(2) Assure that Tennessee has appropriate legislation prohibiting discrimination in employment, public accommodations and housing sufficient to justify the deferral of cases by the federal equal employment opportunity commission, the department of housing and urban development, the secretary of labor and the department of justice under those statutes; . . .

Statesman Photo by Stuart Greener

ROBERT JEFFERIES ADDRESSES LEGISLATIVE COMMITTEE
. . . seeking subpoena power for Human Rights Commission

Grant Power to Rights Board, U.S. Tells House Committee

UP International ...ons said this brought about a "crisis ...ganization supports a competent com-

UP International

Federal civil rights officials told the House State Affairs Committee Friday to give the Human Rights Commission enforcement powers or prepare for federal intervention.

They warned that the commission will be "decertified" to handle job discrimination cases unless it has subpoena, cease and desist and other powers. This will mean a loss in federal funds, too, they said.

...he said, the pending leg-
...d give the commission
...he EEOC doesn't have.

...d the EEOC does have
...ers and can "encourage"
...hrough the courts, with-
...deral funds and denial of
...acts. He acknowledged,
...does not have outright
...ist power.

...avitt, a lobbyist for the
...rs Association, said the
...not have power to sub-
...ds from lending in-
...ly the Internal Revenue
...lo that, he said.

...E. "Bud" Lewis, R-St.
...issue with the threatened
...f federal funds and the
...ral intervention.

...inly opposd to sanctions
...," Lewis said.

...elieve in sanctions and
...ner," Jeffrey said. "But I
...one-ness as it relates to
...this country."

...xtensive ramifications of
...stion, Rep. Gary Ingram,
...ane, successfully moved
...for further study.

service may do that," he said.

Rep. B. E. "Bud" Lewis, R-St. Maries, took issue with the threatened withholding of federal funds and the threat of federal intervention.

"I'm certainly opposd to sanctions and blackmail," Lewis said.

"I don't believe in sanctions and blackmail either," Jeffrey said. "But I do believe in one-ness as it relates to citizenship in this country."

Citing the extensive ramifications of the bill in question, Rep. Gary Ingram, R-Coeur d'Alene, successfully moved that it be held for further study.

Dear Ms. Sullivan:

Upon motion of the Equal Employment Opportunity Commission's San Francisco Regional Director, Frank A. Quinn, the Commission has reviewed Title 67, Chapter 59 of the Idaho Code, as amended by the Idaho Legislature in March 1976. It has also had available to it your letters of March 17 and 23, 1976 to Mr. Quinn. On the basis of its review, the Commission believes that the Idaho Human Rights Commission is not empowered under its statute to "grant or seek relief from employment practices found to be illegal" or to "institute criminal proceedings with respect thereto" and is therefore no longer able to meet the requirements of Sec. 706(c) of Title VII, 42 U.S.C. 2000e-5(c) and §§1601.12(c), (f)(5)(ii), and (k)(1) of the Commission's Procedural Regulations, 29 C.F.R. §§1601.12(c), (f)(5)(ii), and (k)(1).

The 1976 amendments to the Idaho statute take away the Human Rights Commission's authority to grant or seek back pay or other monetary awards for the victims of unlawful employment discrimination. It has been this Commission's position since its inception that appropriate relief means that the victims of discrimination are entitled to be made "whole." The United States Supreme Court has fully endorsed this interpretation in Moody v. Albemarle Paper Co., 422 U.S. 405 (1975). Citing the legislative history, the Court noted that the scope of relief under Section 706(g) of Title VII

FINAL

Rights Panel Again Seeks Power to Subpoena

By JERRY GILLILAND
The Idaho Statesman

The Idaho Human Rights Commission will try again to gain authority to issue subpoenas and fine employers for back wages – powers a spokesman says are needed to protect Idahoans' civil rights.

The commission recently drew up a bill which it will submit to the 1977 Idaho Legislature. The bill would grant subpoena powers and institute back wage provisions. Both issues have been hotly debated in past legislative sessions.

Other proposed additions to present law include:

– Allowing the commission to make an investigative demand on persons accused of discriminatory practices, and requiring them to produce material requested within 30 days. If the order demand is not met, then the commission can appeal to district court for a court order.

– Expanding the law allowing the commission to issue orders by defin-

allow the commission and investigators to discover all the facts in a case, he said.

"Occasionally it was my experience in the state of Maryland as an investigator, an employe would ask me to subpoena information from them even though they were cooperating," Kibbe recalled. Thus the subpoena would save the employer from later reprisals, he explained.

The additions provide several new protections for the employer, Kibbe said, especially the confidentiality and statute of limitation provisions.

"Many times a respondent will settle a case at the conciliation stage so it doesn't become public knowledge that he has been accused of discrimination," he said.

The commission, which received 175 complaints last year had only four which went to the public hearing state, Kibbe noted.

Legislative proposals by the Human Rights Commission always have been controversial issues in the Idaho Legislature. This year two

The federal agency is following through on its threat to withdraw its funding, Kibbe said. The regional office has recommended the action to the national office. "If they succeed the next step will be to go to conference," he said.

Currently the state commission investigates all federal employment discrimination complaints filed by Idahoans and the EEOC, in turn, provides funds to the state commission.

Kibbe said he did not know when the EEOC might complete its action to decertify the Idaho commission. The proposed bill would resolve the problems now existing between the EEOC and the state commission, he said.

Idaho commission actions after federal employment complaints are reviewed by the EEOC and Kibbe reports the state actions are nearly always acceptable to the federal officials now.

Most complaints received by the Human Rights Commission are employment complaints, he said. Last year, of the 175 complaints filed, 146 were employment discrimination complaints and 96 of those were complaints of discrimination because of sex.

The other complaints included 23 on public accommodations, one on education, two on housing and three which the commission had no jurisdiction over, Kibbe said.

He noted that 106 cases were investigated last year with 31 of them ruled by the commission as having "probable cause" and 75 "no probable cause."

Another 53 cases were withdrawn during the year and others are still under investigation this year, Kibbe said.

Twenty-five cases were conciliated during the year, resulting in more than $10,900 in back pay awards to compensate for discriminatory actions, he noted.

The commission staff had reduced its backlog to the point where there is less than a month's delay between the time a complaint is filed and the point where it is assigned to one of the commission's four investigators, he said.

Four months ago, 60 cases were waiting to be reviewed by commissioners, Kibbe noted. Today there are no cases pending commission action, he said.

In addition to the four investigators, the staff includes one lawyer and "two fine secretaries," he said.

The state commission is operating this fiscal year on $147,500 in state funds plus $25,000 in EEOC funds, Kibbe said.

STATE AFFAIRS COMMITTEE

MINUTES

8:55 a.m. March 13, 1976 Room 412

Members excused: Rep. McDermott
Members absent: Rep. Hammond, Maynard, Bunting, Braun, Fitzwater

Guests: Senator Batt
Steve Swadley, Idaho Public Employees Association
Jack F. Farley, Law Enforcement Department
Dick Cade, Law Enforcement Department

Rep. Danielson moved to accept the minutes of March 12 as presented, seconded by Rep. Reardon. Motion carried.

S 1538 RELATING TO HUMAN RIGHTS COMMISSION

Senator Batt said after attending the House State Affairs meeting in which H 556 was held for further study, he had asked the attorney general's office to draft a bill (S1538) which would contain the least possible qualifications to still qualify the Human Rights Commission for deferral status. Senator Batt said he felt it was extremely important that Idaho keep its deferral status because he had been informed that businesses that have had to deal directly with the regional office have had a difficult time doing so. S 1538 provides that the governor representative of industry, one a representative of labor, and the other seven members at large. The appointments would be subject to confirmation by the Senate.

S 1421 ADDS TO, AMENDS AND REPEALS EXISTING LAW TO PROVIDE A PROCEDURE FOR THE HUMAN RIGHTS COMMISSION TO PROCESS COMPLAINTS.

Lieutenant Governor Phil Batt addressed the Committee in favor of S 1421. He told the committee that it was their feeling that it was better to work with a state agency rather than the corresponding federal agency, thus Idaho has maintained a "deferral status", enabling the Human Rights Commission for the State of Idaho to remain in existence. This bill would just insure that Idaho retained it's "deferral status".

STATEMENT OF PURPOSE

RS 7437

Discrimination Statutes. The purpose of the legislation is to consolidate existing anti-discrimination statutes within one enforcement agency. This is effectuated by moving age and equal pay from Department of Labor to the Commission. A secondary purpose is to amend the age discrimination act to make it reasonably comparabl in scope, in terms of persons covered, practices prohibited and remedies available to the federal Age Discrimination in Employment Act in order that the State may be eligible for a funded deferral status for age discrimination complaints filed with EEOC.

TN Code § 4-21-101

(a) It is the purpose and intent of the general assembly by this chapter to:

(1) Provide for execution within Tennessee of the policies embodied in the federal Civil Rights Acts of 1964, 1968 and 1972, the Pregnancy Amendment of 1978 (42 U.S.C. § 2000e(k)), and the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.);

. . .

Idaho Code § 67-5901(1)

The general purposes of this chapter are:

(1) To provide for execution within the state of the policies embodied in the federal Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended, and Titles I and III of the Americans with Disabilities Act.

The Model Anti-Discrimination Act

National Conference of Commissioners on Uniform State Law, Model Anti-Discrimination Act (1966)

(reprinted at 4 Harvard J. on Legislation 212 (1967))

CHAPTER 1—
DECLARATION OF PURPOSE; CONSTRUCTION; SEVERABILITY

SECTION 101. [*Purposes; Construction.*]

(a) The general purposes of this Act are

(1) to provide for execution within the State of the policies embodied in the Federal Civil Rights Act of 1964 and to make uniform the law of those states which enact this Act;

---

6. 6 BNA LAB. POL. & PRAC. §§ 451:51-:1304.
7. *Hearings before the Senate Comm. on Commerce,* 88th Cong., 1st Sess., ser. 27, pt. 2, at 1315-81 (1963).
8. HOUSING & HOME FINANCE AGENCY, FAIR HOUSING LAWS (1964).
9. 89th Cong., 2d Sess., pt. 2, at 1421-26 (1966).
10. 2 T. EMERSON, D. HABER, & N. DORSEN, POLITICAL AND CIVIL RIGHTS IN THE

(2) to secure for all individuals within the State freedom from discrimination because of race, color, religion, or national origin in connection with employment, public accommodations, education and real property transactions, and discrimination because of sex in connection with employment, and thereby to protect their interest in personal dignity, to make available to the State their full productive capacities, to secure the State against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individuals within the State.

(b) This Act shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this Section and the special purposes of the particular provision involved.

COMMENT: Subsection (a)(1) is designed to assure that the act will be construed harmoniously with Titles II and VII of the CRA,[13] as explained in the prefatory note. Compare the Uniform Securities Act, which provides that it shall be so construed "to coordinate the interpretation and administration of this act with the related federal regulation."[14]

Statutory Construction

Where one statute adopts the particular provisions of another by a specific and descriptive reference to the statute or provisions adopted, the effect is the same as though the statute or provisions adopted had been incorporated bodily into the adopting statute; when so adopted, only such portion is in force as relates to the particular subject of the adopting act, and as is applicable and appropriate thereto. Brannon v. City of Coeur d'Alene, 153 Idaho 843, 292 P.3d 234 (2012).

Looking to Federal Law

This Court will look to federal law when federal statutes are contained within Idaho's own statute and when federal and Idaho law mirror each other. See, e.g., International Ass'n of Firefighters, Local No. 672 v. City of Boise City, 136 Idaho 162, 170, 30 P.3d 940, 948 (2001) (when Idaho law mirrors federal law it should be interpreted consistently with federal law).

Teurlings v. Larson, 156 Idaho 65, 71, 320 P.3d 1224, 1230 (2014)

1A Sutherland Statutory Construction § 20:12 (7th ed.)

"The policy section, like the preamble, is available to clarify ambiguous provisions of the statute, but may not be used to create ambiguity.1 The declaration of policy, like the preamble, is not part of the substantive portion of the statute."

Eller v. Idaho State Police, 165 Idaho 147, 156, 443 P.3d 161, 170 (2019)

However, we interpret remedial statutes broadly "to satisfy their remedial purposes."

"As noted, under the rules of statutory interpretation, we must first look to the statute's plain language, using the literal words as the best guide to determining legislative intent. *Marquez,* 164 Idaho at 63–64, 423 P.3d at 1015–16. When the language is clear and unambiguous, the Legislature's expressed intent will be given effect without the court engaging in statutory construction. *Id.* "Only where the language is ambiguous will this Court look to rules of construction for guidance and consider the reasonableness of proposed interpretations." *Id.* Even so, statutory language is not ambiguous simply because parties present conflicting interpretations.

Nassar and But For Causation

Univ. of Texas Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 362, 133 S. Ct. 2517, 2534, 186 L. Ed. 2d 503 (2013)

Haskenhoff v. Homeland Energy Sols., LLC, 897 N.W.2d 553, 585–86 (Iowa 2017)

Weinstein v. Univ. of Connecticut, No. HHD-CV-11-6027112-S, 2022 WL 2356067, at *12 (Conn. Super. Ct. June 30, 2022)

Haskenhoff v. Homeland Energy Sols., LLC, 897 N.W.2d 553, 585–86 (Iowa 2017)

Predictability and stability are especially important in employment law. Employers must comply with both state and federal law. Human resources personnel and supervisors must apply myriad rules and regulations in complex situations. Employers and prospective employers should be able to rely on our precedents. We would generate significant uncertainty if we overrule our own long-standing precedent to diverge from settled federal interpretations. Uncertainty invites more litigation and increasing costs for all parties. An uncertain or costly litigation environment inhibits job creation.

- . . . Congruity between state and federal requirements makes it easier for employers and the bench and bar to apply and follow the law.

Weinstein v. Univ. of Connecticut, 2022 WL 2356067, at *12 (Conn. Super. Ct. June 30, 2022)

"The defendants note that Connecticut looks to federal precedent for guidance in interpreting state antidiscrimination and antiretaliation statutes . . . and argue that § 31-51m is similar to the Title VII retaliation provision. . . .

"The Connecticut Supreme Court is the ultimate authority on interpreting Connecticut statutes; including our fair employment practices statutes. 'Connecticut is the final arbiter of its own laws.' . . .

> Accordingly, the court adopts the motivating factor test as the proper standard in Connecticut for determining causation in claims of retaliation."

Motivating Factor Causation

42 U.S.C. § 2000e-2:

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice."

Bostock and "Because of Sex"

Vroegh v. Iowa Dep't of Corr., 972 N.W.2d 686, 702 (Iowa 2022)

Rouch World, LLC v. Dep't of C.R., 987 N.W.2d 501, 513 (Mich. 2022)

Gauthreaux v. City of Gretna, 360 So.3d 930 (2023)

Vroegh v. Iowa Dep't of Corr., 972 N.W.2d 686, 702 (Iowa 2022)

"We look to the federal courts' interpretations of similar constitutional and statutory language as persuasive authority, but we aren't bound by them. Iowa's courts have interpretive authority over Iowa's statutes. "Even where language in a state civil rights statute is parallel to the Federal Civil Rights Act," we have said, "a state court is under no obligation to follow federal precedent." *Pippen v. State*, 854 N.W.2d 1, 28 (Iowa 2014). And particularly with statutes in which the text in the state and federal versions differs in critical ways, as here, federal court interpretations carry even less persuasive value.

In arguing that the *Bostock* majority correctly interpreted discrimination based on "sex" as including discrimination based on gender identity, Vroegh in effect argues that "gender identity" is subsumed within the meaning of "sex." We disagree with the *Bostock* majority on this issue and thus reject Vroegh's argument advancing it."

Vroegh argues that we should construe "sex" to include discrimination based on transgender status because the Iowa Civil Rights Act, by its own terms, instructs that it "be construed broadly to effectuate its purposes." Iowa Code § 216.18(1) (2017). But our duty in construing this statute, even with the instruction to construe it broadly, requires first that we provide "a fair interpretation as opposed to a strict or crabbed one—which is what courts are supposed to provide anyway." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 233 (2012) [hereinafter Scalia & Garner]. Such a provision doesn't allow courts to ignore the ordinary meaning of words in a statute and to expand or contract their meaning to favor one side in a dispute over another. We effectuate the statute's "purposes" by giving a fair interpretation to the language the legislature chose; nothing more, nothing less. "Sex" doesn't expand to "gender identity" (or anything other than "sex") simply because the statute contains an instruction that it be "construed broadly." We may not through the judicial metamorphosis of words declare a Hulk where the legislature placed merely Bruce Banner.

Rouch World, LLC v. Dep't of C.R., 987 N.W.2d 501, 513 (Mich. 2022)

"Using this more restrictive definition of the term "sex" and applying the but-for causation standard to the provision at hand, we conclude that discrimination on the basis of sexual orientation necessarily involves discrimination because of sex in violation of the ELCRA. In so doing, we find persuasive Bostock's application of Title VII's but-for standard. While we are encouraged but not bound to consider persuasive Title VII federal caselaw, Radtke, 442 Mich. at 381-382, 501 N.W.2d 155, we find that Bostock offers a straightforward analysis of the plain meaning of analogous statutory language and we agree with its reasoning. A discriminator's choice to '[d]eny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations,' on the basis of that individual's sexual orientation is action that is dependent upon the individual's sex under MCL 37.2302(a). Sexual orientation is 'inextricably bound up with sex,' because a person's sexual orientation is generally determined by reference to their own sex"

Gauthreaux v. City of Gretna, 360 So.3d 930 (2023)

While plaintiff argues that the trial court erred in not relying on Bostock in interpreting La. R.S. 23:332, the majority opinion in Bostock states that the only law it considered in rendering its opinion was Title VII, specifically stating that "none of these other [federal or state laws that prohibit sex discrimination] are before us ...." Id. at 1753. Thus, although persuasive, our state courts are not bound by Bostock's interpretation of Title VII in interpreting La. R.S. 23:332. As there is no binding federal or state law or jurisprudence on point, and because the legislature has not seen fit to amend La. R.S. 23:332 to specifically include protection from employment discrimination because of a person's sexual orientation,4 we decline to extend Bostock's reasoning to La. R.S. 23:332 to find that it allows for protection from *936 employment discrimination because of a person's **8 sexual orientation. As such, we find that plaintiff's petition fails to state a cause of action against the City of Gretna and Mayor Constant.

Failed Attempts to “Add the Words”

2020 Idaho Senate Bill No. 1226, Idaho Sixty-Fifth Idaho..., 2020 Idaho Senate Bill...

(1) To provide for execution within the state of the policies embodied **herein and** in the federal Civil Rights Act of 1964, as amended, ~~and~~ the Age Discrimination in Employment Act of 1967, as amended, and Titles I and III of the Americans with Disabilities Act.

(2) To secure for all individuals within the state freedom from discrimination because of race, color, religion, sex**, sexual orientation, gender identity,** ~~or~~ national origin**,** or disability in connection with employment, public accommodations, and real property transactions, discrimination because of race, color, religion, sex**, sexual orientation, gender identity,** or national origin in connection with education, discrimination because of age in connection with employment, and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individuals within the state.

Legislative Intent Indicated By Action

"The legislative intent that controls in the construction of statutes has reference to the Legislature which passed a given act, and that intent is indicated by the action of the Legislature, and not by their failure to act."

Reed v. Huston, 24 Idaho 26, 33, 132 P. 109, 111 (1913) (emphasis in original).

ADAAA – Major Life Activities

(2) Major Life Activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

IHRA – Disability Defined

(15) “Disability” means a physical or mental condition of a person, whether congenital or acquired, which constitutes a substantial limitation to that person and is demonstrable by medically accepted clinical or laboratory diagnostic techniques. A person with a disability is one who (a) has such a disability, or (b) has a record of such a disability, or (c) is regarded as having such a disability;

ADAAA – Major Bodily Function

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

ADAA – Regarded As Impaired

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

ADAAA – Disability Defined

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the

Anderson v. Bright Horizons Children's Centers, LLC, 2022 WL 910157, Slip Copy (Ohio Ct. App. 2022) (ADAAA definitions not applied)

67-5901. PURPOSE OF ~~ACT~~ CHAPTER. The general purposes of this ~~act~~ chapter are:

(1) To provide for execution within the state of the policies embodied in the federal Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended, and Titles I and III of the Americans with Disabilities Act.

(2) To secure for all individuals within the state freedom from discrimination because of race, color, religion, sex or national origin or disability in connection with employment, public accommodations, ~~edu-~~

Certification to State Courts

Taylor v. Burlington Northern Railroad Holdings Inc., 904 F.3d 846 (9th Cir. 2018)

The Washington Supreme Court has stated that "the [WLAD] affords to state residents protections that are wholly independent of those afforded by the federal [ADA], and ... the law against discrimination has provided such protections for many years prior to passage of the federal act." Hale v. Wellpinit Sch. Dist. No. 49, 165 Wash.2d 494, 198 P.3d 1021, 1024 (2009); see also, e.g., Kumar, 325 P.3d at 197–98 (explaining why the WLAD is construed broadly); Martini v. Boeing Co., 137 Wash.2d 357, 971 P.2d 45, 53–55 (1999) (departing from Title VII's restriction on back pay where its language differed from the WLAD). Thus, even if the ADA's coverage of obesity is narrow, Washington's coverage may be broader.

Questions?