

IDAHO

HUMAN RIGHTS
COMMISSION

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Idaho Human Rights Act – Update on IHRC & Legal Developments

Employment & Labor Law Section Meeting
Idaho State Bar
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Disclaimer

The views presented here are my own and should not be attributed to the Idaho Attorney General, or the Office of Attorney General unless specifically identified as such.

Statistics – IHRC and EEOC



IHRC Statistics

Total Cases Filed with the IHRC

FY2015	FY2016	FY2017	FY2018
443	403	485	502

IHRC Statistics

Issues Raised

	FY2015	FY2016	FY2017	FY2018
Sexual Harassment	17%	13%	12%	14%
Harassment / Intimidation	26%	29%	38%	33%

IHRC Statistics

Issues Raised (cont.)

	FY2015	FY2016	FY2017	FY2018
Terms & Conditions	13%	17%	26%	23%
Discharge (Actual & Const.)	71%	70%	73%	71%

IHRC Statistics

Issues Raised (cont.)

	FY2015	FY2016	FY2017	FY2018
Failure to Accommodate	24%	18%	23%	29%

IHRC Statistics

Disability (2015 v. 2018)

Percentage of Filings Increased from
2015 to 2018: **42% to 50%**

IHRC Statistics

Sex (2015 v. 2018)

Percentage of Filings Stayed Flat from
2015 to 2018: **33% to 33%**

IHRC Statistics

Sex – BASES (2018)

Female: 63%*

Pregnancy: 12%

Male: 20%

*Orientation and/or Identity: 6%

IHRC Statistics

Retaliation (2015 v. 2018)

Percentage of Filings Increased from
2015 to 2018: **30% to 36%**

EEOC Workplace Harassment Statistics for FY 2018

- 66 harassment lawsuits
- 41 of these 66 lawsuits were sexual harassment (50% increase over FY2017)
- Sexual harassment charges increased by 13.6% from FY2017
- Reasonable cause findings in FY 2018 increased by 23.6 percent to nearly 1,200

EEOC Statistics for FY 2018

- EEOC successful conciliations increased 43% from FY 2017
- EEOC collected about \$70M for harassment victims through administrative enforcement and litigation (up from \$47.5M in FY 2017)

Sexual Orientation & Gender Identity

A decorative graphic consisting of a solid teal horizontal bar that spans the width of the slide. Below this bar, on the right side, there are several horizontal lines of varying lengths and colors, including teal and white, creating a layered, stepped effect.

Sexual Orientation and Gender Identity

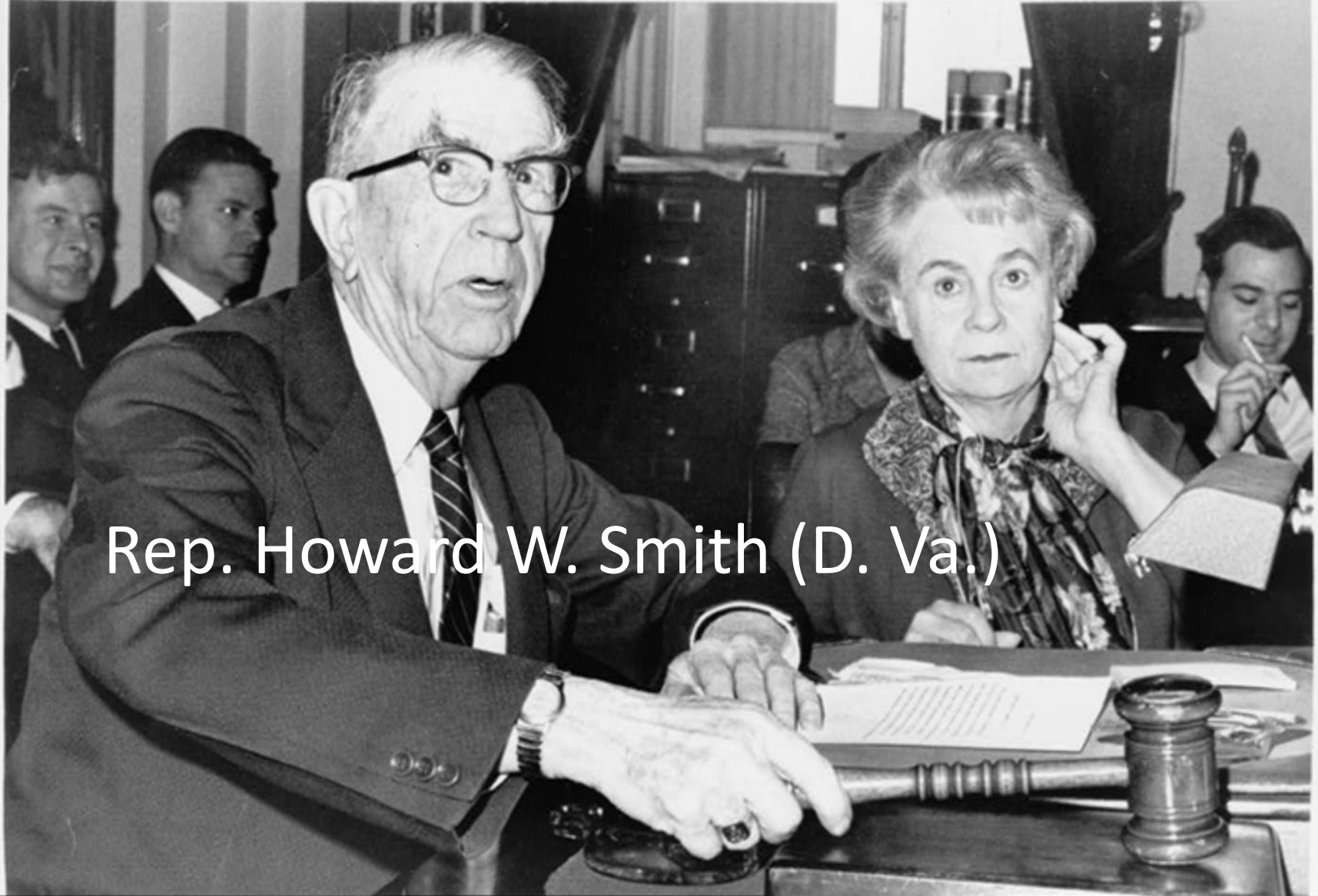
“Add the Words”

Sexual Orientation and Gender Identity

Three Cases Awaiting Certiorari Decisions:

- Altitude Express Inc. v. Zarda
- R.G. and G.R. Harris Funeral Homes Inc. v. EEOC
- Bostock v. Clayton County, Georgia*

WAF-122301-12/23/63-WASHINGTON: Democratic leaders, still struggling to adjourn Congress before Christmas, won a preliminary round 12/23 when the House Rules Committee cleared President Johnson's Foreign Aid bill for floor action. Chairman Howard W. Smith (D-Va) gavels the Committee to order shortly before the 8-4 vote. At right is Rep. Katherine St. George (R-NY). (UPI) TELEPHOTO grg



Rep. Howard W. Smith (D. Va.)

Retaliation Update



- Title VII prohibits employers from “discriminat[ing] against” an employee **“because he has opposed any practice” prohibited under Title VII.**
- Requires proof that adverse employment action occurred “because of” engagement in protected activity

- **“But for” causation** applies to Title VII retaliation claims
- Require proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer.

Univ. of Texas Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 360 (2013)

N.B. The Ninth Circuit recently held that “mixed motive” not “but for” causation standard applies to § 1981 racial discrimination claims. Nat'l Ass'n of African Am.-Owned Media v. Charter Commc'ns, Inc., No. 17-55723, 2019 WL 419393 (9th Cir. Feb. 4, 2019)

- **McDonnell Douglas burden shifting framework** applies to Title VII retaliation claims

Dawson v. Entek Intern., 630 F.3d 928, 936 (9th Cir. 2011)

- **“Adverse action”** for retaliation need not materially alter terms or conditions of employment
- Plaintiff can show that “a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.”

Campbell v. Hawaii Department of Education, 892 F.3d 1005 (9th Cir. 2018)

Merely investigating an employee might be a sufficient adverse employment action for purposes of a Title VII retaliation claim.

Campbell v. Hawaii Department of Education, 892 F.3d 1005 (9th Cir. 2018) , citing Lakeside-Scott v. Multnomah County, 556 F.3d 797, 803 n.7 (9th Cir. 2009); Poland v. Chertoff, 494 F.3d 1174, 1180 (9th Cir. 2007).

Questions

