

SAINT PAUL LEGAL LEDGER
MINNESOTA LAWYER



The POWER 30: Christy Hall

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Last year, the United States Supreme court said that LGBTQ employees are protected by Title VII of the Civil Rights Act from sex discrimination. To many it was an unexpected and lauded decision.

But there were some comments in *Bostock v. Clayton County* that caused concern. The court said the Religious Freedom Restoration Act of 1993 “prohibits the federal government from substantially burdening a person’s exercise of religion unless it demonstrates that doing so both furthers a compelling governmental interest and represents the least restrictive means of furthering that interest. Because RFRA operates as a kind of super statute, displacing the normal operation of other federal laws, it might supersede Title VII’s commands in appropriate cases. (Cites omitted.)

“But how these doctrines protecting religious liberty interact with Title VII are questions for future cases too.”

Although these comments likely will be considered dicta by future courts, since RFRA was not before the court, they have made it into the EEOC’s Updated Compliance Manual on Religious Discrimination.

When the EEOC promulgated the proposed manual changes, Gender Justice in St. Paul and several other organizations responded. It argued that the EEOC manual, which is a guide to investigators and does not have the force of law, does not reflect the actual state of the law “by unnecessarily suggesting that Title VII’s protections against sex discrimination are especially vulnerable to challenges under the Religious Freedom Restoration Act.”

Christy Hall, senior staff attorney at Gender Justice, said the manual (which has been adopted) is misleading. “The goal of the manual is to tell investigators where the law is clear. They go way overboard,” Hall said. “The EEOC is not the enforcement agency for RFRA.”

Although courts are not bound by the manual, it is still likely to have an impact, Hall said. “A civil rights law is only as good as your ability to enforce it. The EEOC is the major player. It is abdicating enforcement in difficult situations.”

On another subject, Hall said, the employment law bar is awaiting a Minnesota Supreme Court opinion in Whitney Hinrichs-Cady v. Hennepin County, which alleges that she was denied accommodation for her pregnancy under the Women’s Economic Security Act Leave Act. She was placed on unpaid leave and eventually terminated. The plaintiff’s claims were dismissed under Rule 12 but the Court of Appeals reversed. Hinrichs-Cady is the first economic security case to go up, Hall said.

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