



ABORTION, RELIGION, GUNS AND UNIONS: WHAT SHOULD EMPLOYERS DO?



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AXIOS

Ex-Southwest flight attendant wins \$5.1 million in discrimination suit



An ex-[Southwest Airlines](#) flight attendant won a \$5.1 million verdict against the airline and her union Friday after a Dallas jury found it had discriminated against her regarding an anti-abortion rights stance that stems from her religious beliefs, [the AP reports](#).





SCOTUS Abortion/Religious Expression Cases

- Why we pair them?
 - Title VII
 - Religious expression about abortion
 - Pregnancy discrimination
 - National Labor Relations Act “protected concerted activities for mutual aid or protection”
 - National/state political and legislative focus



Dobbs v. Jackson Women's Health Organization

- US Constitution provides no basis for abortion rights.
- Regulation of abortion is a state function.
- *Roe v. Wade* was not “settled” law 49 years later.



Kennedy v. Bremerton School District

- Overturned 40+ year precedent
- First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”
- Includes state, county, local government
- Religious expression while engaged in job duties?
- Does not include private sector workplace, however...
- Title VII implications



What Should Employers Do?

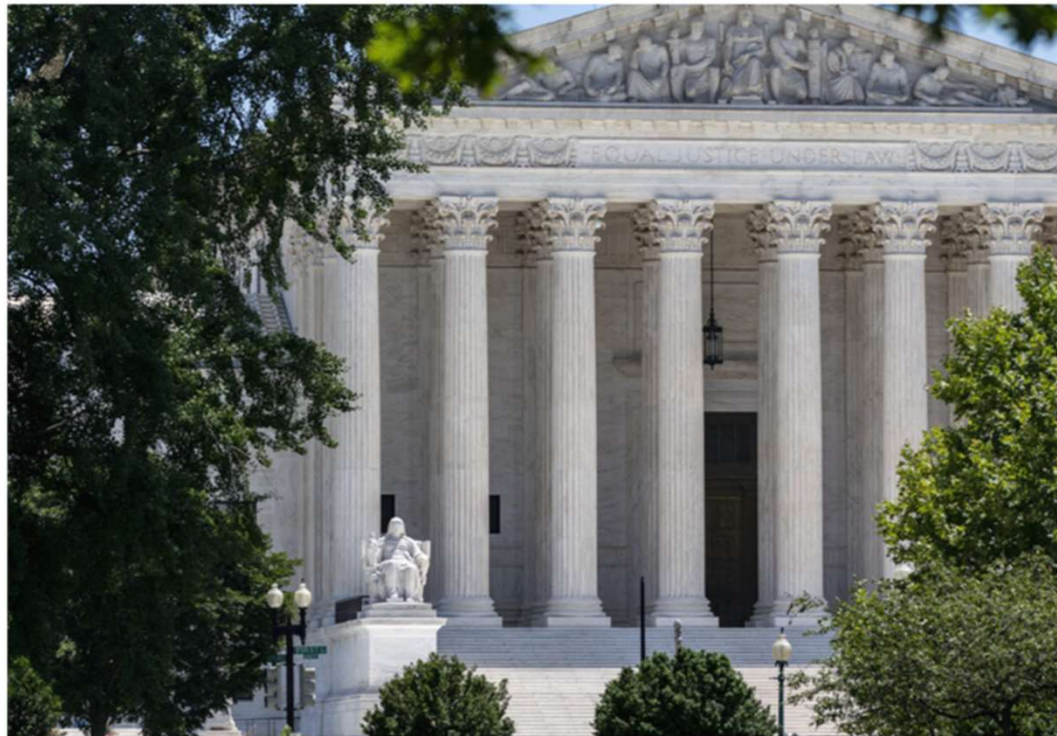
- Review relevant policies
 - Discrimination
 - Harassment
 - Retaliation
 - Social media
 - Off-duty conduct/expression
 - Dress code/uniform/expression on vehicles
- Increased risks through November 8 elections



Evaluate Medical Plan/State Laws

- Is abortion covered?
 - If not, will it be?
- Travel expenses?
- Legal implications?
- Communication of benefits
 - Workplace/social media response?
- Should anything change?

After Supreme Court ruling, it's open season on US gun laws



The Supreme Court is seen on Capitol Hill in Washington, July 14, 2022. The Supreme Court ruling expanding gun rights threatens to upend firearms restrictions across the country as activists wage court battles over everything from bans on AR-15-style guns to age limits. (AP Photo/J. Scott Applewhite, File)



THE HOLLYWOOD REPORTER NEWS

Atlanta's Music Midtown Festival Canceled After Court Ruling Made It Illegal to Keep Guns Out of Event | THR News

Atlanta's Music Midtown Festival canceled after Georgia gun ruling

BY NEWSY VIA VIDEO ELEPHANT AUGUST 2, 2022 AT 4:22 PM

A decades-long music festival scheduled to be held next month in the heart of Atlanta has been called off. Music Midtown's website and social media accounts said that the event was canceled due to "circumstances beyond their control."





NY State Rifle & Pistol Assn v. Bruen

- *New York State Rifle & Pistol Association, Inc. v. Bruen, Superintendent Of New York State Police*
 - NY law made it a crime to possess a gun anywhere without a license.
 - Need to show “proper cause” to “have and carry” a concealed pistol or revolver outside the home
 - “Proper cause: special need for self-protection distinguishable from that of the general community.”



Potential Implications of *Bruen*

- Difficult standard for any state or local gun law
- Employee misunderstanding of workplace implications
- Employer rights
 - Prohibit guns in work areas and company vehicles
 - Parking lot – varies by state
 - Search employee packages, lockers, desks
- Should employers permit certain employees to keep guns at work?
 - If an incident, liability risk/insurance?
 - Law enforcement perspective
 - Other risks

Tennessee federal judge blocks Biden Administration LGBTQ protections

Injunction sought by 20 states, with Tennessee AG Herbert Slatery taking the lead, applies to schools and workplace



A Tennessee federal judge is blocking the Biden administration from enforcing an executive order designed to protect the LGBTQ community from discrimination in schools and the workplace.





State of Tennessee v. U.S. Department of Agriculture

- Filed in Knoxville on behalf of 20 states
- Focus on Biden Administration directives regarding LGBTQ rights in schools and the workplace
- EEOC and Department of Education issued guidance per President's directive.
- Judge enjoined directives on July 15, 2022.



State of Tennessee v. U.S. Department of Agriculture

- SCOTUS decision in *Bostock v. Clayton County*
 - Discrimination based on sexual orientation – transgender is sex discrimination under Title VII
 - Narrow decision – excluded locker rooms, bathrooms, sports teams
- Injunction only applies to enforcement in these states: Alabama, Alaska, Arizona, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and West Virginia.



On the Horizon...

- *Students for Fair Admissions v. Harvard University*
- *Students for Fair Admissions v. University of North Carolina*
 - Oral argument for October
 - Decision by June 2023
- Potential workplace implications
- More challenges to federal regulatory initiatives as administrative overreach: *West Virginia v. EPA* (June 30, 2022).
- *Helix Energy Solutions v. Hewitt*

"Unions are cool again": A new generation of workers advocates for unionization



AUGUST 21, 2022 / 9:36 AM / CBS NEWS



After decades of declining union membership, unionization efforts are underway among workers at such companies as Apple, Google and Starbucks, as well as the nation's second-largest employer, Amazon – and the business world is stunned by their success.

Read in CBS News: <https://stocks.apple.com/AQwcUpW7PRk-5JVaeJDaT-A>





Union Membership

- 1955: 33% of private sector employees
- 2021: 6.1%. private sector; 33.9% public sector
- 2021: 14 million members
- 50% in California and New York



Union Election Results: Jan. 1, 2019 to June 1, 2022

- Unions 2,822 (69.6%)
- Employers 1,232 (30.4%)
- Top 10 states:
 - CA (599) – WA (174)
 - NY (461) – MI (137)
 - IL (301) – TX (123)
 - PA (252) – OH (121)
 - NJ (182) – MA (114)



Unionization Revitalization

- Highest positive public favorability rate since 1965 – 68%
- 57% increase in petitions for elections 10/1/21 to 3/31/22 compared to a year ago
- Alignment with issues of national concern: social justice, climate change, equity.
- Co-ordination with advocacy groups
- President Biden - “most pro-labor president in history.”
- National Labor Relations Board overturning thousands of years of precedent
- Union success at Starbucks and Apple Stores – inflation, labor shortage, fatigue and safety



Millennials Lead Unionization

- 35% of total workforce
- 74% would join a union
- Inspired by public protests – willing to fight for change
- Don't feel they are a partner in the workplace
- Social media



Key Points

- Do not let issues fester.
- A 360° analysis regarding key business/employee decisions
- Workforce engagement
- Problem employees/employee problems
- Training/signals of activity
- Leadership assessment
- Communicate business case for remaining union-free

QUESTIONS & ANSWERS





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