

The Supreme Court Issues Decision in Ames v. Ohio Youth Services

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Practice Area: Labor and Employment

On June 5, 2025, the United States Supreme Court issued a unanimous decision regarding a reverse discrimination case. The case involved a heterosexual female alleging she was discriminated against by being denied a promotion, which was given to a lesbian woman and further for later being demoted and her prior position was then filled by a gay man. The Supreme Court held that a claimant in a majority employment class (i.e. heterosexual) does not have a higher burden of proof, just the same burden of proof as a claimant in a protected employment category (i.e. gay or lesbian). The lower court had incorrectly held that those in a majority class had a higher burden to show “background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority.”

Prior to this decision, court of appeal decisions across the country were split, with some, including the 7th Circuit which covers Wisconsin, holding majority class claimants were required to demonstrate a higher burden. This decision affirms that all claimants have the same burden of proof in discrimination cases.

While standing alone, the decision seems logical and routine, its impact is heightened based upon the current focus and debate on Diversity, Equity and Inclusion (DEI) and Affirmative Action. The Supreme Court previously held in *SFFA v. Harvard* (2023) that a college’s race-conscious admissions programs were generally unconstitutional, unless they could demonstrate a “compelling interest” achieved only through “narrowly tailored” means. While there are differing opinions regarding the impact of these cases, it appears fairly well accepted that affirmative action is diminished and claims challenging employment based on preference, affirmative action or DEI face a greater chance of challenge.

Employers are best advised to consider the following:

1. Make employment decisions on qualifications and not on Title VII characteristics.
 2. Establish and outline non-discriminating business needs and reasons when making employment decisions.
 3. Evaluate Employee Resource Groups (ERGs) to assure the establishment/sponsorship of such groups are not discriminatory on their face and are based on business needs and reasons, and not at exclusion of other similar groups.
 4. Evaluate the use of DEI titles, positions and programs to assure the use does not implicate illegal discriminatory aspects based upon the caselaw. Changing terms may not be necessary if still conforming with the law, but at the same time, changing terms alone is not a cure to potential illegal impact.
 5. Continue to follow affirmative action reporting if applicable to your company.
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