

New Jersey Issues Guidance on Discrimination Law Following Supreme Court's Decision on LGBTQ+ Rights

August 9, 2023

Source: Saiber Employment Law Alert

The New Jersey Division of Civil Rights (DCR) recently issued guidance on how the DCR will enforce the New Jersey Law Against Discrimination following the U.S. Supreme Court's decision in 303 Creative LLC v. Elenis. On July 31, 2023, New Jersey Attorney General, Matthew J. Platkin announced that "The Supreme Court's misguided decision in 303 Creative does not change a simple fact: New Jersey's laws remain among the strongest in the nation for protecting people, including members of the LGBTQ+ community, against bias and discrimination." Attorney General Platkin emphasized that "Our commitment to enforcing those laws and ensuring our residents' rights to fair treatment remains unwavering."

The New Jersey Law Against Discrimination ("LAD") prohibits employers, housing providers, and places of public accommodation from unlawfully discriminating on the basis of actual or perceived sexual orientation, gender, gender identity, gender expression, race, color, national origin, ancestry, religion, disability, and other protected characteristics. The LAD also prohibits employers, housing providers, and places of public accommodation from publishing, circulating, or displaying any communication or advertisement stating that the entity will discriminate or refuse to serve patrons based on a protected characteristic.

In June of this year, the U.S. Supreme Court in 303 Creative, ruled in favor of a Christian website designer who refused to make wedding websites for same-sex couples. The U.S. Supreme Court considered whether the First Amendment barred application of a Colorado anti-discrimination statute to the web designer. The parties agreed that the web designer's websites were "original" and were "customized and tailored" for each customer, and that the websites the business designed were "expressive" and expressed the designer's own speech and message regarding her clients' weddings. The high court found that compelling the website designer to make websites for same-sex couples would violate her constitutional right to free speech because the web designer had a First Amendment right not to make her customized website designs for same-sex weddings.

In its' recently issued guidance, the DCR explains the ruling in 303 Creative will not affect how the LAD applies to the vast majority of businesses and vendors open to the public. The guidance also points out that the Supreme Court's ruling only exempts a narrow set of services offered by some places of public accommodation from anti-discrimination laws like the LAD. Particularly, in order for a business or vendor to claim an exemption from the LAD's requirements, a place of public accommodation must establish that (1) its creative services are "original" and "customized and tailored" for each customer; (2) the creation is "expressive" and expresses the creator's own First Amendment-protected speech; and (3) the public accommodation's refusal to provide the

creative service to a customer is based on the message it conveys, not the customer's identity or protected characteristics standing alone.

Given the narrow implication of the 303 Creative decision, New Jersey employers and employees who work directly with the general public should continue to operate in a manner consistent with the requirements of the LAD and consider the DCR's guidelines for further instruction to facilitate compliance with the LAD. Owners of places of public accommodation and others with questions about the LAD are encouraged to speak with a qualified attorney to address their specific questions and to provide periodic training to their employees on the LAD.

If you have any questions about the above alert, please contact DanaLynn Colao or Caroline Braga of Saiber LLC's Employment and Labor Law practice.