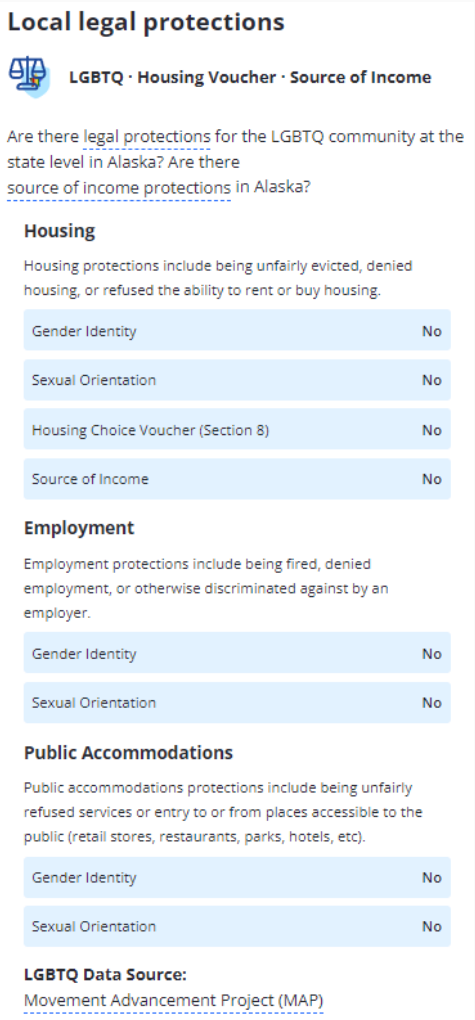
SB 108: LGBTQ+ Nondiscrimination

“An Act Relating to and prohibiting discrimination based on sexual orientation or gender identity or expression.”

Alaska currently **legalizes discrimination** based on sexual orientation, gender expression, or gender identity in regards to **employment, housing, financing, government practices, and public accommodation.**

Discrimination is **bad for business, bad for our economy, and bad for families.**



Local legal protections

LGBTQ · Housing Voucher · Source of Income

Are there legal protections for the LGBTQ community at the state level in Alaska? Are there source of income protections in Alaska?

Housing

Housing protections include being unfairly evicted, denied housing, or refused the ability to rent or buy housing.

Gender Identity	No
Sexual Orientation	No
Housing Choice Voucher (Section 8)	No
Source of Income	No

Employment

Employment protections include being fired, denied employment, or otherwise discriminated against by an employer.

Gender Identity	No
Sexual Orientation	No

Public Accommodations

Public accommodations protections include being unfairly refused services or entry to or from places accessible to the public (retail stores, restaurants, parks, hotels, etc).

Gender Identity	No
Sexual Orientation	No

LGBTQ Data Source:
Movement Advancement Project (MAP)

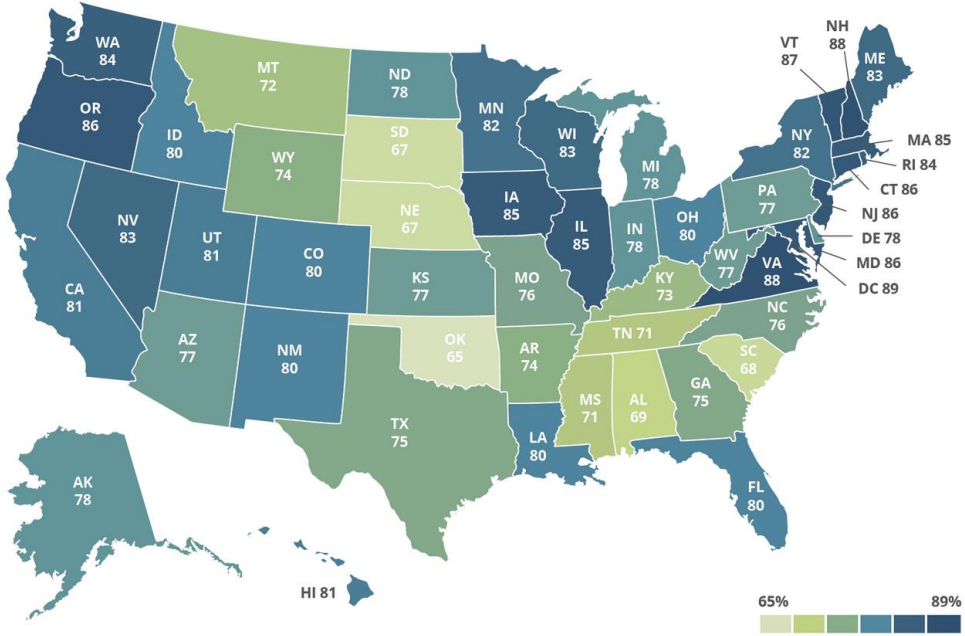
Image: Zillow 2023

Public Support for LGBTQ Non-Discrimination

- The Public Religion Research Institute (PRRI) has conducted phone surveys since 2014.
- They have found longstanding trends of public support for LGBTQ non-discrimination protections.
- The American Values Atlas, the compendium for this research, shows 80% of Americans support such protections.
- 78% of Alaskans support these protections.

FIGURE 5. Support for LGBT Nondiscrimination Protections, by State

Percent who favor laws that would protect gay, lesbian, bisexual, and transgender people against discrimination in jobs, public accommodations, and housing:



Source: PRRI, American Values Atlas, 2022.

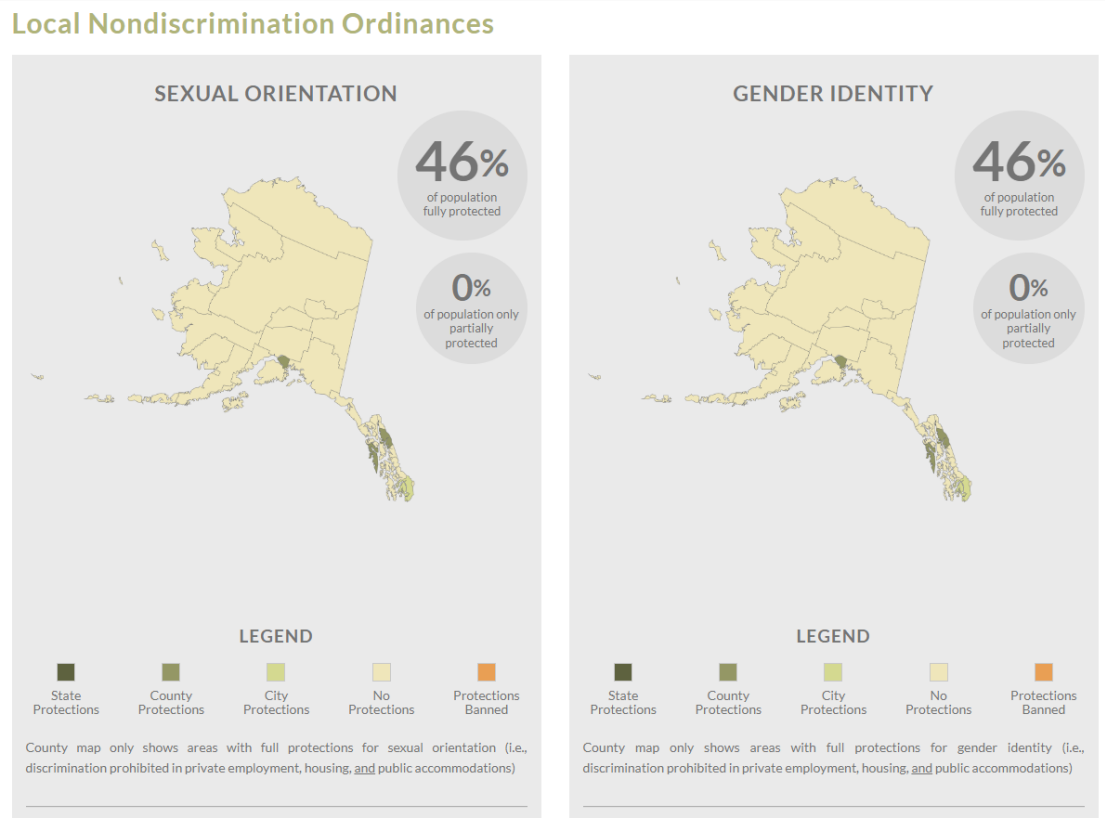
This legislation would put Alaska into alignment with many **major Alaskan employers and Fortune 500 companies**.

As of 2011, 96% of Fortune 500 companies include sexual orientation in their nondiscrimination policies. Economic benefits include:

- Higher recruitment & retention
- Increased generation of ideas & innovation
- Diversified consumer base
- Increased employee productivity
- Securing more public sector clients
- Improved employee relations & morale

SOURCE: *Economic Motives for Adopting LGBT-Related Workplace Policies (The Williams Institute, 2011)*

Local control: Lack of local protections



Irregular protections provide lack of clarity for families, workers, and businesses.

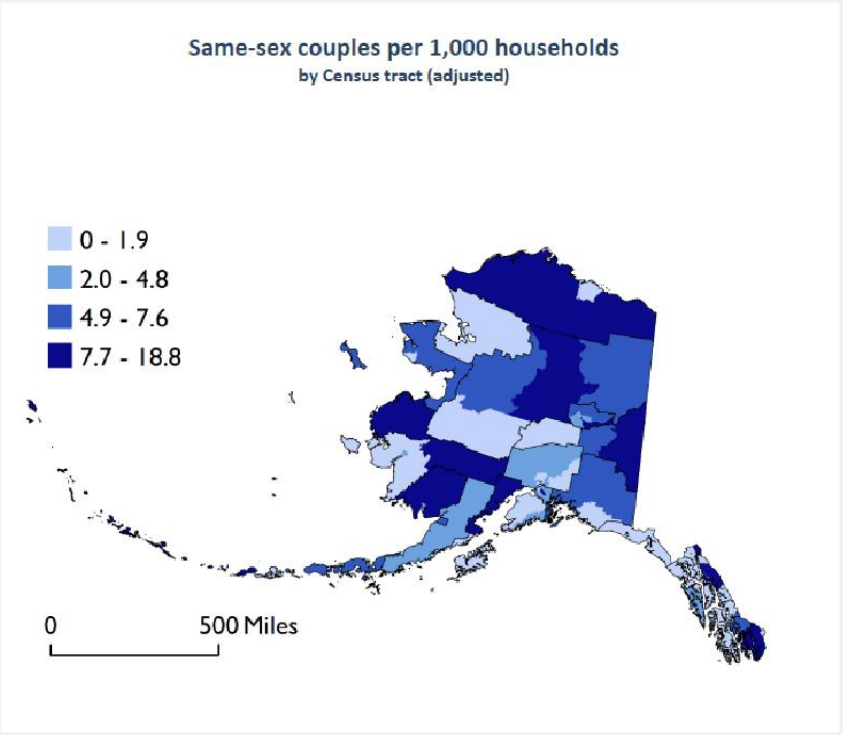
Image: Movement Advancement Project, 2023

BACKGROUND

LGBTQ+ Discrimination in Alaska

2011 Anchorage Survey:

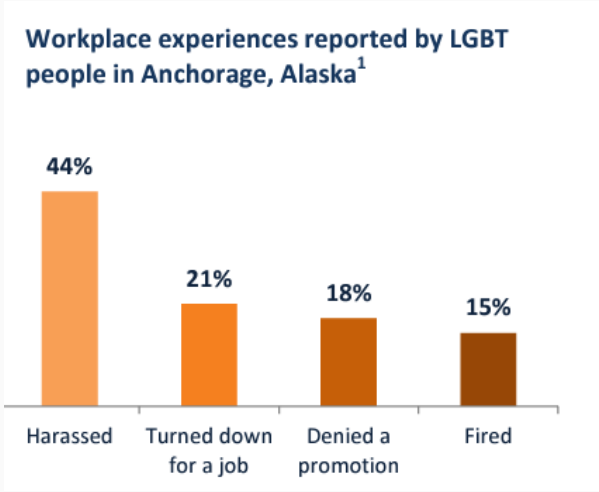
- 10% denied a lease when otherwise qualified.
- 21% turned down for a job when otherwise qualified.
- 73% hide orientation/identity to avoid employment discrimination.
- 10% stopped by police without justification
- 8% denied service in a restaurant or bar.



Alaska Census Snapshot (The Williams Institute, 2010)

BACKGROUND

Discrimination against the LGBTQ+ community



// Census.gov / America Counts: Stories Behind the Numbers / LGBT Community Harder Hit by Economic Impact of Pandemic

Household Pulse Survey Shows LGBT Adults More Likely to Report Living in Households With Food and Economic Insecurity Than Non-LGBT Respondents

August 11, 2021

Written by: Thom File and Joey Marshall

Share Facebook Twitter LinkedIn

The Lesbian, Gay, Bisexual and Transgender (LGBT) adult population reported living in households with higher rates of food and economic insecurity than non-LGBT Americans, according to U.S. Census Bureau survey data released today.

For the first time ever on a population survey sponsored by the Census Bureau, the latest version of the Household Pulse Survey (HPS) asks about sexual orientation and gender identity (SOGI). The HPS continues to provide insight into the experiences of American households during the coronavirus pandemic.

Overall, about 13.1% of LGBT adults lived in a household that experienced food insecurity in the past seven days, compared to 7.2% of non-LGBT adults.

By combining a series of three questions, the survey allows researchers to compare the recent experiences of the LGBT population to other adults.

Overall, about 13.1% of LGBT adults lived in a household where there was sometimes or often not enough to eat in the past seven days, compared to 7.2% of non-LGBT adults.

America Counts Story

Census Survey Now Asks about Sexual Orientation, Gender Identity

Phase 3.2 of the Household Pulse Survey now includes questions on sexual orientation and gender identity, vaccinations of children and the new Child Tax Credit.

LGBTQ+ Discrimination

Key Findings

Overall, 28% of LGBTQ youth reported experiencing homelessness or housing instability at some point in their lives.

- Nearly half (44%) of Native/Indigenous LGBTQ youth have experienced homelessness or housing instability at some point in their life, compared to 16% of Asian American/Pacific Islander youth, 27% of White LGBTQ youth, 27% of Latinx LGBTQ youth, 26% of Black LGBTQ youth, and 36% of multiracial LGBTQ youth.
- Homelessness and housing instability were reported at higher rates among transgender and nonbinary youth, including 38% of transgender girls/women, 39% of transgender boys/men, and 35% of nonbinary youth, compared to 23% of cisgender LGBQ youth.
- 16% of LGBTQ youth reported that they had slept away from parents or caregivers because they ran away from home, with more than half (55%) reporting that they ran away from home because of mistreatment or fear of mistreatment due to their LGBTQ identity.
- 14% of LGBTQ youth reported that they had slept away from parents or caregivers because they were kicked out or abandoned, with 40% reporting that they were kicked out or abandoned due to their LGBTQ identity.

Half of LGBTQ workers have faced job discrimination, report finds

Nearly 1 in 10 experienced employment bias in the last year alone, according to the Williams Institute at the UCLA School of Law.

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Sept. 8, 2021, 7:45 AM AKDT / Updated Sept. 8, 2021, 8:01 AM AKDT

By Dan Avery

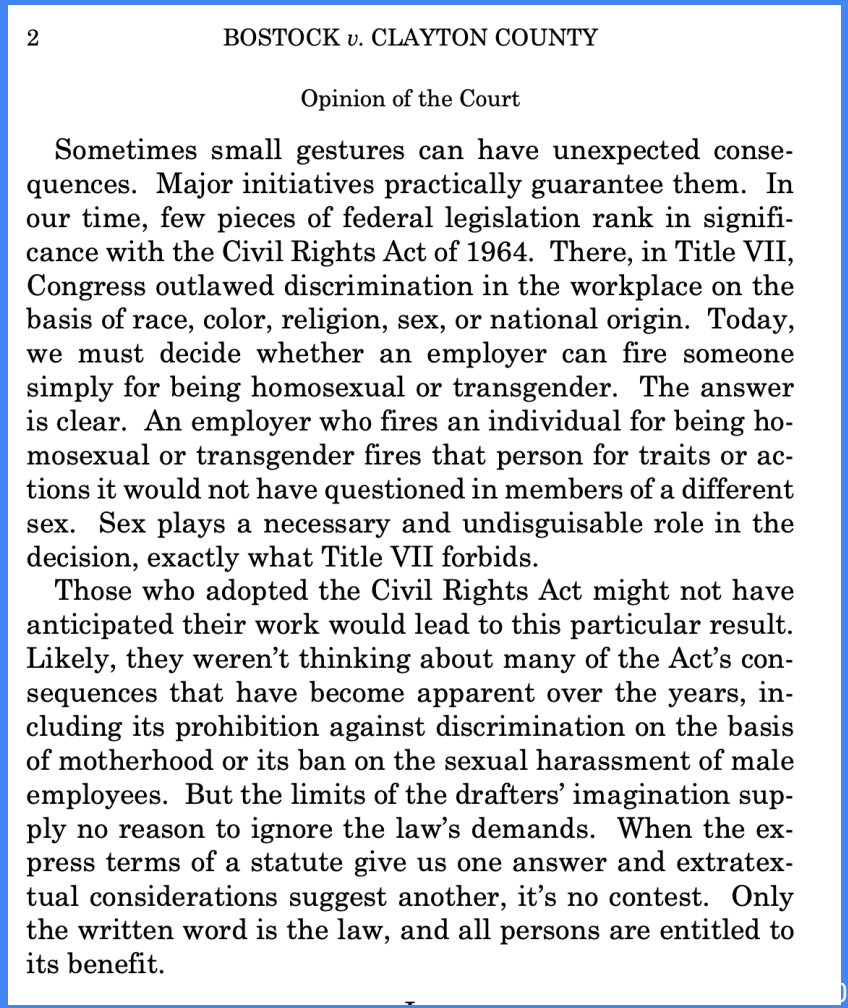
Nearly 1 in 10 LGBTQ people in the United States experienced workplace discrimination in the last year, and almost half faced employment bias at some point in their careers, according to a new survey.

The findings were published Tuesday in a report titled LGBT People's Experiences of Workplace Discrimination and Harassment by the Williams Institute at the University of California, Los Angeles, School of Law. It found that 46 percent of LGBTQ workers reported receiving unfair treatment at some point in their careers because of their sexual orientation or gender identity – including being passed over for a job, harassed at work, denied a promotion or raise, excluded from company events, denied additional hours or fired. An estimated 9 percent reported being denied a job or laid off in the past 12 months because of their orientation or identity.

CASE LAW

Bostock v. Clayton County

- Court ruling from 2020: Consolidated cases of *Bostock v Clayton County, Zarda v Altitude Express, and R.G. & G.R. Harris Funeral Homes v EEOC & Aimee Stephens*
- Title VII of the 1964 Civil Rights Act: prohibits discrimination based on sex
- Discrimination based on sexual orientation, gender identity and gender expression: inherently based on sex discrimination



2 BOSTOCK *v.* CLAYTON COUNTY

Opinion of the Court

Sometimes small gestures can have unexpected consequences. Major initiatives practically guarantee them. In our time, few pieces of federal legislation rank in significance with the Civil Rights Act of 1964. There, in Title VII, Congress outlawed discrimination in the workplace on the basis of race, color, religion, sex, or national origin. Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.

Those who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result. Likely, they weren't thinking about many of the Act's consequences that have become apparent over the years, including its prohibition against discrimination on the basis of motherhood or its ban on the sexual harassment of male employees. But the limits of the drafters' imagination supply no reason to ignore the law's demands. When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit.

HISTORY OF ASCHR

Commission for Human Rights

- Established in 1963
- Falls under the Office of the Governor
- Attorney General provides counsel

Sec. 18.80.200. Purpose.

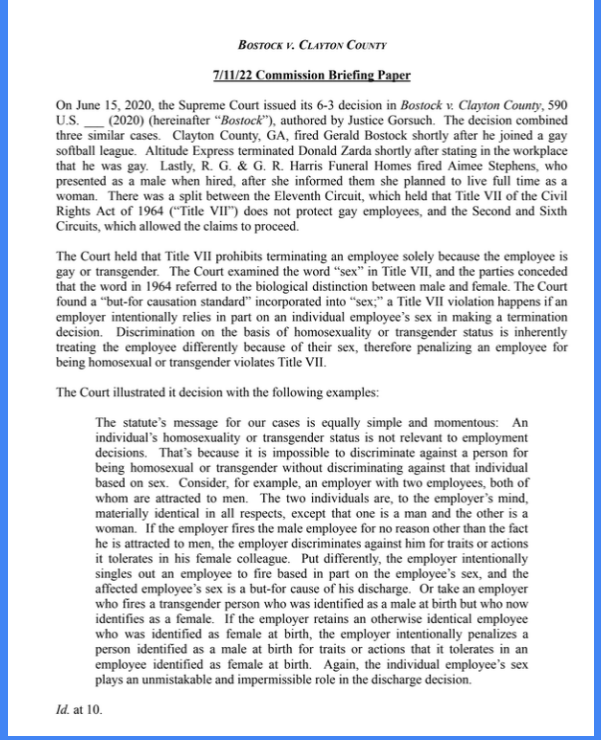
(a) It is determined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy, or parenthood is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and threatens peace, order, health, safety, and general welfare of the state and its inhabitants.

(b) Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination in employment, in credit and financing practices, in places of public accommodation, in the sale, lease, or rental of real property because of race, religion, color, national origin, sex, age, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood. It is also the policy of the state to encourage and enable physically and mentally disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment. It is not the purpose of this chapter to supersede laws pertaining to child labor, the age of majority, or other age restrictions or requirements.

PRIOR GUIDANCE

Department of Law

- In July 2022, the Department of Law initially held that ASCHR could accept LGBTQ+ cases in all five subject areas.
- “This is supported in part by the Alaska Supreme Court to further the goal of eradication of discrimination.”
- In August 2022, it was rescinded and the Attorney General said ASCHR needs statutory authority for other areas under their jurisdiction.
- SB 108 provides this necessary authority.



Bostock v. Clayton County

7/11/22 Commission Briefing Paper

On June 15, 2020, the Supreme Court issued its 6-3 decision in *Bostock v. Clayton County*, 590 U.S. ___ (2020) (hereinafter “*Bostock*”), authored by Justice Gorsuch. The decision combined three similar cases. Clayton County, GA, fired Gerald Bostock shortly after he joined a gay softball league. Altitude Express terminated Donald Zarda shortly after stating in the workplace that he was gay. Lastly, R. G. & G. R. Harris Funeral Homes fired Aimee Stephens, who presented as a male when hired, after she informed them she planned to live full time as a woman. There was a split between the Eleventh Circuit, which held that Title VII of the Civil Rights Act of 1964 (“Title VII”) does not protect gay employees, and the Second and Sixth Circuits, which allowed the claims to proceed.

The Court held that Title VII prohibits terminating an employee solely because the employee is gay or transgender. The Court examined the word “sex” in Title VII, and the parties conceded that the word in 1964 referred to the biological distinction between male and female. The Court found a “but-for causation standard” incorporated into “sex;” a Title VII violation happens if an employer intentionally relies in part on an individual employee’s sex in making a termination decision. Discrimination on the basis of homosexuality or transgender status is inherently treating the employee differently because of their sex, therefore penalizing an employee for being homosexual or transgender violates Title VII.

The Court illustrated it decision with the following examples:

> The statute’s message for our cases is equally simple and momentous: An individual’s homosexuality or transgender status is not relevant to employment decisions. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer’s mind, materially identical in all respects, except that one is a man and the other is a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee’s sex, and the affected employee’s sex is a but-for cause of his discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as a male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee’s sex plays an unmistakable and impermissible role in the discharge decision.

Id. at 10.

Because the Alaska Supreme Court incorporated the Title VII framework in interpreting AS 18.80, and ASCHR is a Fair Employment Practices Agency with the EEOC that investigates Title VII employment discrimination cases, the Commission almost immediately began accepting LGBTQ+ employment discrimination cases after *Bostock* was decided, pending guidance from the Department of Law. In December of 2020, the Department of Law provided guidance: ASCHR should accept LGBTQ+ discrimination claims in all five of our subject matter areas. This is supported in part by the Alaska Supreme Court opinion that AS 18.80 “is intended to be more broadly interpreted than federal law to further the goal of eradication of discrimination.” *Smith v. Anchorage School Dist.*, 240 P.3d 834, 842 (Alaska 2010). At that point, ASCHR began accepting all LGBTQ+ complaints that were also otherwise jurisdictional as a matter of law.

BILL OVERVIEW

SB 108: LGBTQ+ Nondiscrimination

"*...to further the goal of the eradication of discrimination*."

- Alaska Department of Law

- Updates the definition of "sex" in AS 18.80.300 to include "sexual orientation, gender identity or gender expression."
- Consistent with *Bostock.*
- Updates the definition of "sexual orientation" to reflect modern scientific understanding, and remove loopholes.
- Conforming change to AS 18.80 "blockbusting".

Thank you!