

Akron Bar Association

Advanced Topics in Labor and Employment Law

Update on Current Legislation, Department of Labor
Regulations, Supreme Court Decisions on the Horizon

John F. Myers – December 11, 2019

A Preview of the 2019-2020 U. S. Supreme Court Employment Law Cases



A Preview of the 2019-2020 U. S. Supreme Court Employment Law Cases

Title VII Cases

- This term the Supreme Court has heard arguments in two cases involving adverse employment actions taken against two gay men. The central issue in each is:

Whether discrimination against an employee because of sexual orientation constitutes prohibited employment discrimination “because of . . . sex” within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.

- In a third case the Supreme Court is presented with the issue of whether Title VII’s ban on employment discrimination because of “sex” applies to discrimination based upon gender identity.

Altitude Express v. Zarda

Docket No. 17-1623

Issue: Does Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination “because of . . . sex” encompass discrimination based on an individual’s sexual orientation?



Altitude Express v. Zarda

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Facts:

- Donald Zarda worked in 2010 as a sky-diving instructor at Altitude Express. His job included participating in tandem skydives with clients, in which he was necessarily strapped in close proximity to the client.
- Zarda, a gay man, sometimes told female clients about his sexual orientation to address any concern they might have about being strapped to a man for a tandem skydive.
- On one occasion after Zarda informed a female client about his sexual orientation and performed the tandem jump with her, the client alleged that Zarda had inappropriately touched her and disclosed his sexual orientation to excuse his behavior.
- In response to this complaint, Zarda's boss fired him. Zarda denied touching the client inappropriately and claimed that he was fired solely because of his reference to his sexual orientation.

Altitude Express v. Zarda

Issue: Does Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination “because of . . . sex” encompass discrimination based on an individual’s sexual orientation?

Facts:

- Zarda filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC) claiming that he was fired because of his sexual orientation and also because of he did not conform to male gender stereotypes.
- He brought a claim in federal court alleging, among other things, that Altitude Express violated Title VII of the Civil Rights Act of 1964 by terminating him because of his sexual orientation. The district court ruled for Altitude Express, finding that Title VII does not protect against discrimination based on sexual orientation.

Altitude Express v. Zarda

Issue: Does Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination “because of . . . sex” encompass discrimination based on an individual’s sexual orientation?

Facts:

- After the district court's ruling, the EEOC issued an opinion in a separate case (persuasive but not binding on federal district courts) that Title VII's “on the basis of sex” language necessarily includes discrimination “on the basis of sexual orientation.” In light of this decision, Zarda moved for the district court to reinstate his Title VII claim, but the district court denied the motion, citing binding Second Circuit precedent, *Simonton v. Runyon*, 232 F.3d 33 (2d Cir. 2000), and *Dawson v. Bumble & Bumble*, 398 F.3d 211 (2d Cir. 2005).

Altitude Express v. Zarda

Issue: Does Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination “because of . . . sex” encompass discrimination based on an individual’s sexual orientation?

Facts:

- Zarda appealed to the US Court of Appeals for the Second Circuit, which ruled for Altitude Express as well. The panel declined Zarda’s request that it reconsider its interpretation of Title VII and overturn Simonton and Dawson, as only the court sitting en banc can do that. ***The Second Circuit then agreed to rehear the case en banc and expressly overruled Simonton and Dawson, finding, consistent with the EEOC’s position, that Title VII’s prohibition on discrimination because of sex necessarily includes discrimination because of sexual orientation.***

Bostock v Clayton County

Docket No. 17-1618

Issue: Does Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination “because of . . . sex” encompass discrimination based on an individual’s sexual orientation?



Bostock v Clayton County

Issue: Does Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination “because of . . . sex” encompass discrimination based on an individual’s sexual orientation?

Facts:

- Gerald Bostock, a gay man, began working for Clayton County, Georgia, as a child welfare services coordinator in 2003. During his ten-year career with Clayton County, Bostock received positive performance evaluations and numerous accolades.
- In 2013, Bostock began participating in a gay recreational softball league. Shortly thereafter, Bostock received criticism for his participation in the league and for his sexual orientation and identity generally.

Bostock v Clayton County

Issue: Does Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination “because of . . . sex” encompass discrimination based on an individual’s sexual orientation?

Facts:

- During a meeting in which Bostock’s supervisor was present, at least one individual openly made disparaging remarks about Bostock’s sexual orientation and his participation in the gay softball league.
- Around the same time, Clayton County informed Bostock that it would be conducting an internal audit of the program funds he managed. Shortly afterwards, Clayton County terminated Bostock allegedly for “conduct unbecoming of its employees.”

Bostock v Clayton County

Issue: Does Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination “because of . . . sex” encompass discrimination based on an individual’s sexual orientation?

Facts:

- Within months of his termination, Bostock filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC).
- Three years later, in 2016, he filed a pro se lawsuit against the county alleging discrimination based on sexual orientation, in violation of Title VII of the Civil Rights Act of 1964. The district court dismissed his lawsuit for failure to state a claim, finding that Bostock’s claim relied on an interpretation of Title VII as prohibiting discrimination on the basis of sexual orientation, contrary to a 1979 decision holding otherwise, which was recently been affirmed in *Evans v. Georgia Regional Hospital*, 850 F.3d 1248 (11th Cir. 2017).

Bostock v Clayton County

Issue: Does Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination “because of . . . sex” encompass discrimination based on an individual’s sexual orientation?

Facts:

- Bostock appealed, and the US Court of Appeals for the Eleventh Circuit affirmed the lower court.
- In addition to noting procedural deficiencies in Bostock’s appeal, the Eleventh Circuit panel pointed out that it cannot overrule a prior panel’s holding in the absence of an intervening Supreme Court or Eleventh Circuit *en banc* decision.

Bostock v Clayton County Altitude Express v Zarda

The Supreme Court consolidate the cases for oral argument.

Takeaways from oral argument:

Justice Neil Gorsuch, at times appeared sympathetic to the plaintiffs' argument but also expressed concern about the "massive social upheaval" that he believed would follow from a ruling for them.

Justice Elena Kagan stated the test to determine whether there is discrimination under Title VII is whether the same thing would have happened if the employee was a different sex. That test, she suggested, comes out against the employers: Although Bostock and Zarda were fired for being gay – that is, for being men who were attracted to other men – they would not have been fired if they were women who were attracted to men.

R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission

Issue: Does Title VII of the Civil Rights Act of 1964 prohibit discrimination against transgender employees based on (1) their status as transgender or sex-stereotyping under Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)?



R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission

Issue: Does Title VII of the Civil Rights Act of 1964 prohibit discrimination against transgender employees based on (1) their status as transgender or sex-stereotyping under Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)?

Discrimination against an employee on the basis of sex stereotyping--that is, a person's nonconformity to social or other expectations of that person's gender--constitutes impermissible sex discrimination, in violation of Title VII of the Civil Rights Act of 1964. The employer bears the burden of proving that the adverse employment action would have been the same if sex discrimination had not occurred. *Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)*

R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission

Issue: Does Title VII of the Civil Rights Act of 1964 prohibit discrimination against transgender employees based on (1) their status as transgender or sex-stereotyping?

Facts:

- Aimee Stephens (formerly known as Anthony Stephens) worked as a funeral director at R.G. & G.R. Harris Funeral Homes, Inc., which is a closely held for-profit corporation that operates several funeral homes in Michigan. The funeral home had a policy of providing clothing to male employees, but not to female employees.
- For most of her employment at the Funeral Home, Stephens lived and presented as a man.
- Shortly after she informed the Funeral Home's owner and operator that she intended to transition from male to female, she was terminated.

R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission

Issue: Does Title VII of the Civil Rights Act of 1964 prohibit discrimination against transgender employees based on (1) their status as transgender or sex-stereotyping under Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)?

Facts:

- Stephens filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging that she had been terminated based on unlawful sex discrimination.
- After conducting an investigation, the EEOC brought a lawsuit against the Funeral Home charging that it had violated Title VII of the Civil Rights Act of 1964 by terminating Stephens's employment on the basis of her transgender or transitioning status and her refusal to conform to sex-based stereotypes.
- The district court granted summary judgment to the Funeral Home, and a panel of the US Court of Appeals for the Sixth Circuit reversed, holding that the Funeral Home's termination of Stephens based on her transgender status constituted sex discrimination in violation of Title VII.

Babb v Wilkie

Docket No. 18-882

Issue: Whether the federal-sector provision of the Age Discrimination in Employment Act of 1967, which provides that personnel actions affecting agency employees aged 40 years or older shall be made free from any “discrimination based on age,” 29 U.S.C. §633a(a), requires a plaintiff to prove that age was a but-for cause of the challenged personnel action.

Facts:

- Petitioner Noris Babb worked as a pharmacist for the Veterans Affairs (VA) Medical Center in Bay Pines, Florida, since 2004.
- While there, she helped to develop the Geriatric Pharmacotherapy Clinic (GPC), which serves older veterans with diseases or disabilities common to individuals of advanced age with military service

Babb v Wilkie

Docket No. 18-882

Facts:

- In 2009, the Pharmacy Management gave Babb an advanced scope (full practice authority) to prescribe medications without a physician, which was necessary for her position.
- In 2010, the VA rolled out a nationwide treatment initiative similar to the GPC Babb had helped develop. Against recommendations by Human Resources and despite requests from doctors, Pharmacy Management rejected applications by several current module pharmacists—all females over 50—and granted applications of two pharmacists under 40.
- Two of the female pharmacists who were denied advancement filed Equal Employment Opportunity (EEO) complaints, and Babb provided statements and testified in support of their EEO claims.
- The pharmacists claimed that their non-selection purportedly for lack of advanced scopes was pretext for discrimination and that any justification for denying advanced scopes was pretext for discrimination as well.

Babb v Wilkie

Docket No. 18-882

Facts:

- Babb alleged that as a result of her participation in the EEO process, she was denied opportunities to participate in the new program and that Pharmacy Management required her to agree to a schedule that was unworkable for her department.
- Unable to meet this requirement, Babb's advanced scope was removed and was consequently disqualified from promotion.
- A female pharmacist under 30 without an advanced scope was selected for the promotion.

Babb v Wilkie

Docket No. 18-882

Facts:

- Babb brought this action under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 (ADEA) alleging that she was the victim of gender-plus-age discrimination and that the VA retaliated against her for participating in protected EEO in violation of those laws.
- The district court granted summary judgment for the VA.
- On appeal to the U.S. Court of Appeals for the Eleventh Circuit, Babb argued that the district court erred in part by not allowing her to prove that illegal discrimination or retaliation was a “motivating factor” behind the VA’s refusal to promote her.
- The Eleventh Circuit affirmed the lower court, finding itself bound by precedent that federal sector employees’ claims under ADEA and Title VII require that the plaintiff show discrimination or retaliation is a “but for” factor in the adverse personnel action.

Babb v Wilkie

Docket No. 18-882

- The Supreme Court granted certiorari to decide the applicable causation standard for a federal-sector age discrimination claim. *Babb v. Wilkie*, – – S. Ct. – -, 2019 WL 145517 (2019).
- The Supreme Court has already decided the causation standard for private-sector employees. The Supreme Court concluded that “because of age” in the private-sector statute means “that age was the ‘reason’ that the employer decided to act.” *Gross v. FBL Fin. Serv., Inc.*, 557 U.S. 167, 176 (2009). Therefore, the Court held that the plaintiff “must prove that age was the ‘but-for’ cause of the employer’s adverse decision.” *Id.*

Babb v Wilkie

Docket No. 18-882

- In *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) the Supreme Court held, for the first time, that an adverse employment action motivated by both legal and illegal reasons constitutes actionable discrimination under Title VII. In a concurring opinion, Justice O'Connor agreed that an employee can prove discrimination under a mixed-motive theory, but she concluded that the employee must offer direct evidence in support thereof. See *id.* at 276 (O'Connor, J., concurring).
- Congress subsequently amended Title VII by passing 42 U.S.C. § 2000e--2(m). Section 2000e--2(m) "responded to *Price Waterhouse* by setting forth standards applicable in mixed-motive cases." See *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 94 (2003).

Babb v Wilkie

Docket No. 18-882

Private Sector Employees - 29 U.S.C. 623(a) provides:

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, **because of such individual's age.**

Public Sector Employee - 29 U.S.C. 633a(a) provides:

All personnel actions affecting employees or applicants for employment who are at least 40 years of age . . . shall be made **free from any discrimination based on age.**

Babb v Wilkie

Docket No. 18-882

In *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009), the Supreme Court held that **the provision of the ADEA applicable to private-sector employees precludes application of a motivating-factor standard.**

The Court interpreted that provision's particular text: "It shall be unlawful for an employer ... to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, **because of such individual's age.**" *Id.* at 176, 129 S.Ct. 2343 (quoting 29 U.S.C. § 623(a)(1)) (emphasis added in *Gross*). **It focused on the phrase "because of" — which, the Court held, requires an age-discrimination plaintiff to prove "that age was the 'reason' that the employer decided to act," i.e., "the 'but-for' cause of the employer's adverse decision."** *Id.*

Babb v Wilkie

Docket No. 18-882

Babb contends the provision of the ADEA that governs discrimination claims brought by federal -sector employees reads differently than the provision that governs private sector age claims.

It provides that "[a]ll personnel actions affecting employees or applicants for employment who are at least 40 years of age shall be made free from any discrimination based on age." 29 U.S.C. § 633a(a) (emphasis added).

Babb contends that the federal-sector provision's particular framing— which, quite unlike the private-sector provision, requires that employment decisions be made "free from any discrimination" based on age— requires a different result here than in *Gross*, and should be read to embody a motivating-factor (rather than but-for) causation standard.

Comcast Corp. v. National Association of African American-Owned Media

Docket No. 18-1171

Issue: Does a claim of race discrimination under 42 U.S.C. § 1981 require that the plaintiff show but-for causation, or only that race is a motivating factor?

42 U.S.C 1981 provides”

(a)Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Comcast Corp. v. National Association of African American-Owned Media

Docket No. 18-1171

Facts:

- Entertainment Studios Network (ESN), owned by African American actor and comedian Byron Allen, and the National Association of African American-Owned Media, an entity created by Allen, sued Comcast over Comcast's decision not to carry ESN's channels.
- ESN alleged that Comcast's decision not to carry ESN's networks **was based, at least in part, on racial animus against ESN**, which is the only 100% African American-owned multi-channel media company in the United States. At the time of Comcast's decision, several other large distributors— including Charter Communications, Time Warner Cable, DirecTV, and AT&T—had also declined to enter into carriage agreements with ESN.

Comcast Corp. v. National Association of African American-Owned Media

Docket No. 18-1171

Facts:

- The district court dismissed ESN's original complaint and several subsequent amended complaints against Comcast and other defendants for failure to plead facts that state a plausible claim for relief.
- On appeal, the U.S. Court of Appeal for the Ninth Circuit held in a related case involving Charter Communications that "mixed-motive claims are cognizable under § 1981," meaning that "even if racial animus was not the but-for cause of a defendant's refusal to contract, a plaintiff can still prevail if she demonstrates that discriminatory intent was a factor in that decision."
- Applying this standard, the Ninth Circuit concluded that ESN had stated a valid Section 1981 claim based on its assertions that the carriers had entered into contracts with "white-owned, lesser-known networks during the same period."
- The Ninth Circuit declined petitions for rehearing *en banc*.

Comcast Corp. v. National Association of African American-Owned Media

Comcast Corp, in its petition for writ of certiorari contends that:

- Twice now in the context of federal antidiscrimination laws, this Court has instructed that the rule of but-for causation is the “default rule[]” against which Congress is presumed to legislate. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 347 (2013); see also *Gross v. FBL Fin. Serv., Inc.*, 557 U.S. 167 (2009).

One question presented for review is:

Whether, in accordance with this Court’s directive that “but-for” causation is the default rule for federal anti-discrimination statutes, the implied cause of action under section 1981 enacted in the Civil Rights Act of 1866 imposes a but-for standard of causation or instead incorporates the “motivating factor” standard first created in the late twentieth century for Title VII claims.

Legislation

Sexual orientation and gender identity.

This is an area of law in flux. Currently there is no federal law that *includes specific language* that protects employees from discrimination on the basis of sexual orientation or gender identity.

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees on the basis of sex, race, color, national origin and religion. It generally applies to employers with 15 or more employees, including federal, state and local governments.

The U.S. Equal Employment Opportunity Commission considers the prohibition against sex discrimination to include discrimination on account of sexual orientation or gender identity.

The U.S. Supreme Court has accepted three cases that should determine whether sexual orientation and gender identity fall within the protection of Title VII.

Legislation

Sexual orientation and gender identity – Federal Employees

The Civil Service Reform Act of 1978 (CSRA), as amended, protects federal government applicants and employees from discrimination in personnel actions based on race, color, sex, religion, national origin, age, disability, marital status, political affiliation, or on conduct which does not adversely affect the performance of the applicant or employee -- which can include sexual orientation or gender identity.

See Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment at <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/addressing-sexual-orientation-and-gender-identity-discrimination-in-federal-civilian-employment.pdf>, www.opm.gov/diversity/Transgender/Guidance.asp, and OSC's Prohibited Personnel Practices and How to File a Complaint at <https://osc.gov/Pages/PPP.aspx>

Legislation

Sexual orientation and gender identity – Federal Employees

It is the policy of the government of the United States to provide equal opportunity in federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation or status as a parent, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the federal government, to the extent permitted by law.

Executive Order 11478, section 1 (as amended by Executive Orders 13087 and 13152)

Legislation

Sexual orientation and gender identity – Ohio _ State Employees

On January 14, 2019 Governor Dewine signed Executive Order 2012-05D

1. No person employed by any State Cabinet agency or by a State board or commission shall discriminate against any other State employee or candidate for State employment on the basis of race, color, religion, gender, gender identity or expression, national origin (ancestry), military status (past, present or future), disability, age (40 years or older), status as a parent during pregnancy and immediately after the birth of a child, status as a parent of a young child, status as a foster parent, genetic information, **or sexual orientation**, as those terms are defined in Ohio law, federal law, and previous Executive Orders, in making any of the following State government employment-related decisions:

- 1) Hiring;
- 2) Layoff; Termination;
- 3) Transfer;
- 4) Promotion;
- 5) Demotion;
- 6) Compensation;
- 7) Eligibility for In-Service Training Programs

Legislation

Sexual orientation and gender identity – Ohio _ State Employees

2. Any State employee or candidate for State employment who believes that any State agency, board, or commission or any officer or employee thereof has discriminated against him or her in violation of this Order may file a complaint with: (a) their own supervisor; (b) the particular agency's Equal Opportunity Office; (c) the Equal Opportunity Division of the Ohio Department of Administrative Services; (d) the Ohio Civil Rights Commission; or (e) the U.S. Equal Employment Opportunity Commission. All such complaints will be investigated and resolved within the time frame allowed for claims of discrimination that are recognized by Ohio and federal law. Persons determined to have engaged in unlawful or improper discrimination in violation of this Executive Order may be subject to discipline up to and including termination of State employment, as well as other sanctions that would be applied to illegal discriminatory conduct under Ohio law.

It will expire ten (10) calendar days after Governor Dewine's last day as Governor of Ohio unless rescinded before then.

Legislation

Sexual orientation and gender identity – Ohio Employees

The Ohio Civil Rights Commission encourages anyone, who feels she or he has been discriminated against because of his or her sexual orientation, stereotyping or gender identity, to file a charge of discrimination with our agency.

While the Ohio Civil Rights Commission is limited to enforcing Ohio's laws against discrimination, **we will accept charges and take all reasonable steps to determine whether the Commission has jurisdiction to investigate the allegations under a harassment, stereotyping or gender identity theory.**

If the Commission is not able to directly handle the charge, we will take all necessary action to transfer a case or provide other resources and support.

<https://www.crc.ohio.gov/FilingaCharge/LGBTQ.aspx>

Legislation

Sexual orientation and gender identity – Ohio Cities, Municipalities and Counties with ordinances prohibiting discrimination on account of sexual orientation and/or sexual identity

Akron, Amberly Village, Athens, Beachwood, Bexley, Bowling Green, Canton, Cincinnati, Cleveland, Cleveland Heights, Columbus, Coshocton, Dayton, East Cleveland, Kent, Lakewood, Newark, North Olmstead, Olmstead Falls, Oxford, South Euclid, Springfield, Toledo, Worthington, Yellow Springs, Youngstown, Cuyahoga County, Summit County

Legislation

Sexual orientation and gender identity – Summit County Ohio - County Employees

It is the County of Summit's policy, per Codified Ordinance 169.21, that there be no discrimination with respect to hire, tenure, terms and conditions of or privileges of employment or any other matter directly related to employment against any employee or applicant on the basis of race, color, sex, age, religion, national origin, ancestry, veteran status, disability, **sexual orientation, gender identity** or any other characteristic to the extent protected by law.

The Equal Employment Opportunity (EEO) Compliance Administrator has been designated by the County Executive as the primary contact person for discrimination and harassment complaints. The EEO Compliance Administrator is responsible for employment related training, employment law compliance and complaint procedures, e.g., harassment, discrimination, Equal Employment Opportunity Commission charges and Ohio Civil Rights Commission complaints.

<https://scene.summitoh.net/index.php/human-resources/eeoc>

Legislation

City of Akron

Akron, Ohio - Code of Ordinances TITLE 3 - ADMINISTRATION CHAPTER 38 -UNLAWFUL DISCRIMINATION

Ordinance No. 381-2018

38.01 - Definitions.

10. (a) "**Discriminate**" means to engage in, take part in, create, enforce, or establish any act, policy, or practice that subjects any person to differential treatment as a result of that person's age, race, color, creed, religion, national origin, ancestry, disability, marital status, familial status, sex, gender, **sexual orientation**, or military status.

(b) "**Discrimination**" means any act, policy, or practice that subjects any person to differential treatment as a result of that person's age, race, color, creed, religion, national origin, ancestry, disability, marital status, familial status, sex, gender, **sexual orientation**, or military status.

(c) "**Discriminatory**" means characterized by differential treatment as a result of a person's age, race, color, creed, religion, national origin, ancestry, disability, marital status, familial status, sex, gender, **sexual orientation**, or military status.

Legislation

Akron, Ohio - Code of Ordinances TITLE 3 - ADMINISTRATION CHAPTER 38 -UNLAWFUL DISCRIMINATION

Ordinance No. 381-2018

38.02 - Unlawful discrimination related to employment.

38.03 - Unlawful discrimination related to housing.

38.04 - Unlawful discrimination related to business establishments, public accommodations and/or educational institutions.

38.06 - Unlawful coercion or retaliation.

Legislation

Akron, Ohio - Code of Ordinances TITLE 3 - ADMINISTRATION CHAPTER 38 -UNLAWFUL DISCRIMINATION

Ordinance No. 381-2018

38.01 - Definitions.

16. "**Gender**" *includes actual or perceived sex, gender identity, and gender expression.*

17. "**Gender identity**" means a person's internal, deeply held sense of the person's gender, which may be the same or different from the person's sex assigned at birth.

18. "**Gender expression**" means a person's representation of the person's gender through the person's name, choice of pronouns, clothing, haircut, behavior, voice, or other body characteristics.

27. "**Sexual orientation**" means actual or perceived heterosexuality, homosexuality, or bisexuality.

Legislation

Akron, Ohio - Code of Ordinances TITLE 3 - ADMINISTRATION CHAPTER 38 -UNLAWFUL DISCRIMINATION

Ordinance No. 381-2018

Akron Civil Rights Commission

The **Akron Civil Rights Commission** is appointed by Mayor Dan Horrigan and approved by Akron City Council. The Commission serves to provide residents with the opportunity to resolve discrimination issues at a local level.

The Commission investigates complaints of unlawful discrimination based on background, beliefs, or identity based on:

Housing, including home sales, leases, rentals, and financial.

Employment, including hiring, promotions, discipline, working conditions, and salary.

Public accommodations, including access to goods, services, business, and public spaces.

City contracts.

<https://www.akronohio.gov/cms/site/0dd775fb6359ed5d/index.html>

Legislation

Akron Civil Rights Commission

38.07 - Akron Civil Rights Commission.

A. The Akron Civil Rights Commission (hereinafter the "Commission") is hereby constituted in accordance with the provisions of this chapter for the purposes of enforcing the provisions of this chapter.

B. The Commission shall be comprised of five members appointed by the Mayor by and with the consent of Council. The composition of the Commission shall broadly reflect the diversity of the City of Akron and aim to include a diverse set of members from classes of individuals protected from discrimination by this chapter. The Mayor may, by and with the consent of Council, appoint up to two alternate members to serve in the event of a temporary vacancy, absence, or recusal of a member.

Legislation

Akron Civil Rights Commission



Legislation

Akron Civil Rights Commission

38.07 - Akron Civil Rights Commission.

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

1. To receive, initiate, investigate, seek to conciliate, hold hearings, and issue orders on complaints alleging violations of this chapter;
2. To cooperate with relevant federal and state authorities;
3. To require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation in person by deposition, and require the production of documents relevant to the complaint, in accordance with this chapter;
4. To cooperate with community, professional, civic, and religious organizations, as well as state and federal agencies, in the development of public education programs regarding compliance with the provisions of this chapter and equal opportunity and treatment of all individuals;
5. To make available to the public information on this chapter, grievance procedures, public records of the Commission and any other information that would further the purposes and intentions of this chapter.

Legislation

Akron Civil Rights Commission

38.07 - Akron Civil Rights Commission.

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.08 - Complaints; consideration by the commission.

A. A complainant may file with the Commission a written sworn complaint stating that a discriminatory practice has been committed, setting forth the facts sufficient to enable the Commission to identify the person(s) charged and the discrimination alleged. A complaint may be amended by the Complainant at any time prior to a hearing on the complaint or an order dismissing the complaint.

B. Within a reasonable time after receipt of the complaint, the Commission shall:

1. Furnish the complainant with a notice acknowledging the filing of the complaint and informing the complainant of the complaint process; and
2. Furnish the respondent with a copy of the complaint and a notice advising the respondent of the provisions of this chapter.

C. The **complaint must be filed within one year after the occurrence of the alleged discriminatory practice**. If the alleged discriminatory practice is a continuing practice, a complaint must be filed within one year after the cessation of the alleged discriminatory practice.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.08 - Complaints; consideration by the commission.

A. A complainant may file with the Commission a written sworn complaint stating that a discriminatory practice has been committed, setting forth the facts sufficient to enable the Commission to identify the person(s) charged and the discrimination alleged. A complaint may be amended by the Complainant at any time prior to a hearing on the complaint or an order dismissing the complaint.

B. Within a reasonable time after receipt of the complaint, the Commission shall:

1. Furnish the complainant with a notice acknowledging the filing of the complaint and informing the complainant of the complaint process; and
2. Furnish the respondent with a copy of the complaint and a notice advising the respondent of the provisions of this chapter.

C. The **complaint must be filed within one year after the occurrence of the alleged discriminatory practice**. If the alleged discriminatory practice is a continuing practice, a complaint must be filed within one year after the cessation of the alleged discriminatory practice.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.08 - Complaints; consideration by the commission.

D. The Commission shall promptly commence an investigation of the complaint after the filing of the complaint. The Commission, or designee, shall promptly investigate the matter to determine whether there is reasonable cause to believe a discriminatory practice exists.

E. If it is determined that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice, the Commission shall furnish a copy of an order dismissing the complaint to the complainant, the respondent, and any such public officers and persons as the Commission deems proper.

F. If it is determined that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice, the Commission shall issue a letter of determination stating the basis for its finding of reasonable cause. The letter of determination shall be furnished to the respondent by mail or in person, and shall include information regarding optional conciliation proceedings, as provided for in this chapter.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.10 - Conciliation.

A. If the Commission determines after investigation that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice, the Commission shall endeavor to eliminate the alleged discriminatory practices by conference, conciliation, and persuasion. Up to two members of the Commission may participate in conciliation proceedings with the assistance of the City's Department of Law, or the Commission may delegate participation in the conciliation proceedings to the City's Department of Law. With the consent of the complainant and the respondent, the Commission may undertake conciliation proceedings at any time after a complaint has been filed.

B. The terms of a conciliation agreement reached with a respondent shall require the respondent to refrain from discriminatory practices in the future and shall make such further provisions as may be agreed upon between the Commission, the Director of Law, and the respondent.

C. If a conciliation agreement is entered into, the Commission shall issue a copy to the Complainant and the Respondent and provide a copy to the Mayor or the Mayor's designee.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.10 - Conciliation.

D. The Commission shall not make public information concerning efforts in a particular case to eliminate discriminatory practice by conference, conciliation, or persuasion, whether or not there is a conciliation agreement. A conciliation agreement shall not be made public unless the Commission determines that disclosure is required by state or federal law. Conciliation agreements entered into pursuant to this chapter are not intended to be public records subject to disclosure under the Ohio Public Records Act.

E. At any time after a conciliation agreement is entered into, in the reasonable discretion of the Commission, the Commission may investigate whether the respondent is following the terms of the conciliation agreement.

F. If a finding is made that the respondent is not complying with the terms of the conciliation agreement, the Commission shall proceed as though a new complaint had been filed.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.11 - Hearings.

A. If a conciliation agreement has not been reached within ninety days after an administrative determination of reasonable cause to believe that discrimination took place, or if the respondent declines participation in the conciliation process, **the Commission shall promptly serve on the respondent by mail or in person a written notice, together with a copy of the complaint**, as it may have been amended, and a copy of the letter of determination, requiring the respondent to answer the allegation(s) of the complaint at a hearing before the Commission, at a time and place specified by the Commission. A copy of the notice shall be furnished to the complainant and such public officers and persons as the Commission deems proper.

B. A member of the Commission who participated in conciliation proceedings shall not participate in the hearing or in the subsequent deliberation of the Commission.

C. The respondent may file an answer with the Commission in accordance with the rules of the Commission before the hearing date. The respondent may amend an answer at any time prior to a hearing or the issuance of an order dismissing the complaint.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.11 - Hearings.

D. If the respondent fails to answer the complaint, the Commission shall find the respondent in default, unless good cause is shown. In the event of default, the hearing shall proceed on the evidence offered by the complainant.

E. A respondent, who has filed an answer or whose default in answering has been set aside for good cause shown, may appear at the hearing, may examine and cross-examine witnesses and the complainant, and may offer relevant evidence.

F. The complainant, and, in the discretion of the Commission, any person may intervene, examine and cross-examine witnesses, and present relevant evidence.

G. Efforts at conference, conciliation and persuasion shall not be permitted to be placed in evidence or discussed on the record.

H. Testimony taken at the hearing shall be under oath and recorded.

I. All hearings conducted under this section shall be conducted in accordance with the Charter of the City of Akron.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.12 - Findings and orders.

A. If, following a hearing held under this chapter, the Commission determines that the respondent has not engaged in a discriminatory practice, the Commission shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint. A copy of the order shall be furnished to the complainant, the respondent, the Mayor, and such other public officers as the Commission deems proper.

B. If, following a hearing held under this chapter, the Commission determines that the respondent has engaged in a discriminatory practice, the **Commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory practice and to provide such remedies as in the judgment of the Commission will carry out the purposes of this chapter.** A copy of the order shall be delivered to the respondent, the complainant, the Mayor, and such other public officers as the Commission deems proper.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.13 - Remedies.

A. Remedies ordered under this section may include any and all of the following as the Commission finds appropriate:

1. Hiring, reinstatement, upgrading, or promotion of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable;
2. Admission or restoration of individuals to union membership, admission to or participation in a guidance program, apprenticeship, training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to such programs;
3. Extension of access to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of Respondent's business establishment, place of public accommodation, or educational institution;
4. Reporting as to the manner of compliance;
5. Posting notices in conspicuous places in the respondent's place of business in the form prescribed by the Commission;

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.13 - Remedies.

6. Payment to the complainant of damages for an injury, including humiliation and embarrassment, caused by the discriminatory practice, and costs, including reasonable attorney fees;

7. Payment to the Commission of a civil penalty not to exceed one thousand dollars for each violation. Each day on which a continuing violation occurs shall constitute a new and separate violation of this chapter. Penalties collected pursuant to this section will be used to support the operations of the Commission and to promote equality in the City of Akron; and/or

8. Such other remedies as shall be necessary and proper to eliminate and correct all discrimination identified by the evidence submitted at the hearing or in the record, whether or not included in a complaint.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.14 - Judicial review.

Any complainant or respondent aggrieved by an order of the Commission, including an order dismissing a complaint, may obtain judicial review through the Summit County Court of Common Pleas pursuant to Chapter 2506 of the Ohio Revised Code or through the Akron Municipal Court.

(Ohio Revised Code Chapter 2506: Appeals From Orders Of Administrative Officers And Agencies)

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.15 - Resistance to or obstruction of commission.

Any person who willfully resists, prevents, impedes or interferes with the Commission, its members, agents, or agencies in the performance of duties pursuant to this chapter, or violates any order of the Commission shall be subject to a civil penalty not to exceed five thousand dollars in addition to such order or decree that may be issued.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.16 - State/Federal remedies.

A. The remedies provided for in this chapter are in addition to, not in lieu of, those provided for by state and federal law. This chapter shall therefore not be construed so as to limit a person's right to file complaint with any state or federal agency, board, tribunal, or court vested with jurisdiction to receive, review and act upon complaints of discrimination. This chapter shall not be construed as limiting the right of any person to seek remedies in courts of competent jurisdiction pursuant to state or federal law which grant private rights of action to persons aggrieved by discriminatory acts of the type prohibited by this chapter. There is no requirement that an aggrieved person file a complaint with the City pursuant to this chapter before seeking any other federal, state or other remedy available to the person.

B. A person's election to seek remedies provided for in this chapter shall not operate to toll any statute of limitation set forth in state or federal law for pursuing remedies under state or federal law for acts of discrimination of the type prohibited by this chapter.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.17 - Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter, or the application thereof to any person, firm, corporation, or circumstance, is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion thereof.

38.18 - Political subdivisions of the State of Ohio.

This chapter does not apply to any political subdivisions of the State of Ohio.

Legislation

Akron Civil Rights Commission

G. In the enforcement of this chapter, the Commission shall have the following powers and duties:

38.17 - Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter, or the application thereof to any person, firm, corporation, or circumstance, is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion thereof.

38.18 - Political subdivisions of the State of Ohio.

This chapter does not apply to any political subdivisions of the State of Ohio.

Legislation

Ohio - Legislation Introduced

The Ohio Legislature 133rd General Assembly, S.B. No. 11:

A Bill To amend sections 9.03, 124.93, 125.111, 153.59, 153.591, 340.12, 511.03, 717.01, 1501.012, 1751.18, 2927.03, 3113.36, 3301.53, 3304.15, 3304.50, 3314.06, 3332.09, 3721.13, 3905.55, 4111.17, 4112.01, 4112.02, 4112.021, 4112.04, 4112.05, 4112.08, 4117.19, 4725.67, 4735.16, 4735.55, 4744.54, 4757.07, 4758.16, 4765.18, 5104.09, 5107.26, 5123.351, 5126.07, 5165.08, 5312.04, 5515.08, and 5709.832 of the Revised Code to enact the Ohio Fairness Act to prohibit discrimination on the basis of sexual orientation or gender identity or expression, to add mediation as an informal method that the Ohio Civil Rights Commission may use, and to uphold existing religious exemptions under Ohio's Civil Rights Law.

Introduced and referred to committee February 2019

Legislation

Ohio - Legislation Introduced

The Ohio Legislature 133rd General Assembly, S.B. No. 11:

Sec. 4112.01 Definitions

(24) "Sexual orientation" means actual or perceived, heterosexuality, homosexuality, or bisexuality.

(25) "Gender identity or expression" means the gender related identity, appearance, or mannerisms or other gender ,related characteristics of an individual, without regard to the individual's designated sex at birth.

Sec. 4112.02. It shall be an unlawful discriminatory practice:

(A) For any employer, because of the race, color, religion, sex, age, ancestry, national origin, disability, **sexual orientation, gender identity or expression**, or military status, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

U.S. Department of Labor Regulations

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

The Department of Labor revised the regulations at 29 C.F.R. part 541 with an effective date of January 1, 2020.

The standard salary level for exempt employees is raised from \$455 (\$23,660/year) to \$684 per week (\$35,568/year);

The standard salary level for exempt employees could be updated every four years by submitting a notice of proposed rulemaking for comment;

The total annual compensation level for “highly compensated employees” is raised from \$100,000 to \$107,432;

Employers are allowed to use commissions, nondiscretionary bonuses and other nondiscretionary payments (like incentive payments) that are paid at least annually to satisfy up to 10 percent of the standard salary level; and

The special salary levels for workers in U.S. territories and in the motion picture industries have been revised to \$455 and \$1,043 respectively.

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

The most impactful change is the first—the change in the standard salary from \$455 to \$684. The DOL has estimated that this change will allow an additional 1.2 million workers to be eligible for overtime. However, it should be noted that the salary level increase does not solely dictate who is eligible for overtime. If an employee makes more than \$684 per week under the new rule, the employee may still be eligible for overtime if they are *not* employed as an Executive, Administrative, and Professional employee (EAP). Essentially, the DOL uses the standard salary as a way to filter out employees that likely are not exempt as EAPs. EAPs are likely to make more than the standard salary, so the standard salary is an efficient tool for determining who is eligible for overtime pay.

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees
Under the Fair Labor Standards Act (FLSA)

To comply with these changes, employers must identify employees who are currently classified as exempt from overtime but do not make at least \$684 per week, which equates to \$35,568 on an annual basis.

After these employees are identified, employers can: 1) reclassify exempt employees as nonexempt, paying these employees overtime for any hours worked over 40 per week, or 2) maintain the exemption for these employees by raising their pay to meet or exceed the revised standard salary level.

If employers choose the second option, they should ensure these employees meet the two additional tests involved in FLSA classification: 1) the employees must be paid on a salary or fee basis, and 2) must meet the executive, administrative or professional duties test which has not changed.

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees
Under the Fair Labor Standards Act (FLSA)

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$684 per week;

- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

https://www.dol.gov/whd/overtime/fs17b_executive.pdf

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;

- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

https://www.dol.gov/whd/overtime/fs17c_administrative.pdf

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

Professional Exemption

To qualify for **the learned professional** employee exemption, all of the following tests must be met:

The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;

The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;

The advanced knowledge must be in a field of science or learning; and

The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

Professional Exemption

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

https://www.dol.gov/whd/overtime/fs17d_professional.pdf

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees
Under the Fair Labor Standards Act (FLSA)

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

The salary requirements of the regulation do not apply to the outside sales exemption. An employee who does not satisfy the requirements of the outside sales exemption may still qualify as an exempt employee under one of the other exemptions allowed by Section 13(a)(1) of the FLSA and the Part 541 regulations if all the criteria for the exemption is met.

https://www.dol.gov/whd/overtime/fs17f_outsidesales.pdf

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

The employee must be compensated either on a salary or fee basis at a rate not less than \$684* per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;

The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;

The employee's primary duty must consist of:

1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

https://www.dol.gov/whd/overtime/fs17e_computer.pdf

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees
Under the Fair Labor Standards Act (FLSA)

Highly Compensated Employees

The regulations contain a special rule for “highly compensated” employees who are paid total annual compensation of \$107,432 or more. A highly compensated employee is deemed exempt under Section 13(a)(1) if:

1. The employee earns total annual compensation of \$107,432 or more, which includes at least \$684* per week paid on a salary or fee basis;
2. The employee’s primary duty includes performing office or non-manual work; and
3. The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Thus, for example, an employee may qualify as an exempt highly compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.

https://www.dol.gov/whd/overtime/fs17h_highly_comp.pdf

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

Blue-Collar Workers

- The exemptions provided by FLSA Section 13(a)(1) do not apply to manual laborers or other “blue-collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. Such nonexempt “blue-collar” employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training.
- FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under Section 13(a)(1) of the FLSA nor the regulations at 29 C.F.R. Part 541, no matter how highly paid they might be.

https://www.dol.gov/whd/overtime/fs17i_blue_collar.pdf

U.S. Department of Labor Regulations

Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees
Under the Fair Labor Standards Act (FLSA)

Police Officers, Fire Fighters and Other First Responders 29 C.F.R. § 541.3 provides that police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees (“first responders”) who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; and other similar work are not exempt under Section 13(a)(1) or the regulations and thus are protected by the minimum wage and overtime provisions of the FLSA.

https://www.dol.gov/whd/overtime/fs17j_first_responders.pdf