

Does Same-Sex Harassment Support Gender Discrimination Claims? Texas Supreme Court To Decide

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The Texas Supreme Court agreed to determine whether a school teacher's allegations of a hostile work environment by her same-sex superiors can support a claim of gender discrimination in violation of the Texas Commission on Human Rights Act (TCHRA). The court will also decide whether the circumstantial evidence presented to prove the teacher's retaliation claim is sufficient to support a violation of the TCHRA. The teacher alleged that a fellow coach began to sexually harass by allegedly making comments about the teacher's body and physical appearance. When the teacher reported the harassment to her direct supervisor, the supervisor did nothing to put a stop to it and, shockingly, joined in the harassment. The teacher subsequently reported the harassment to the school principal and submitted a written complaint. The principal failed to file a formal complaint and, rather, conducted her own investigation. The principal's underwhelming reaction pushed the school teacher to file charges of discrimination and harassment with the EEOC, at which point the principal informed her that there would be "consequences" for her complaints. The teacher quickly found that there would, in fact, be consequences to her complaints. Within a few days of learning of the EEOC charges, the principal placed the teacher on a remedial plan and claimed it was necessary to assist in the teacher's ineffective communication with co-workers and failure to report the alleged harassment within 10 days of its occurrence. The principal placed the teacher on administrative leave soon thereafter and eventually terminated her employment. The school's petition to the Texas Supreme Court asked it to determine whether the teacher's allegations of same-sex hostile work environment—woman to woman harassment, in this case—can constitute gender-based discrimination under the TCHRA. The school argued in its petition that the appeals court failed to consider a U.S. Supreme Court standard that requires harassment to be "discriminatory at its core" in order to be actionable. The school also asked the court to determine whether the teacher's circumstantial evidence used to support her retaliation claim was sufficient to support a TCHRA violation, giving special consideration to the teacher's failure to submit any evidence regarding the but-for causation analysis required in such cases. The case will likely be placed on the court's calendar in late 2017. Click [here](#) to view full briefing on the issue.

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