

A Side-By-Side Comparison:

Ohio Fairness Act, Equality Act, and *Bostock* Decision

Now with the *Bostock* decision

When the Equality Act passes

When the Ohio Fairness Act (OFA) passes

Employment – Could an employer fire someone based on their sexual orientation and gender identity?

Good

No. *Bostock* ruled that anti-LGBTQ discrimination is prohibited under Title VII of the Civil Rights Act.

Better

No. The Equality Act would explicitly make anti-LGBTQ discrimination illegal by amending Title VII of the Civil Rights Act.

Best

No. The OFA would add sexual orientation and gender identity into Ohio's existing anti-discrimination law.

However, the Civil Rights Act has a carve-out in employment for small businesses. Under federal law, businesses with fewer than 15 employees could fire someone for being LGBTQ. That means that employees at small to midsize businesses are still at risk of discrimination.

The OFA would also provide broader and greater protections than federal law. Federal employment discrimination law only applies to employers with 15 or more employees. Ohio's employment discrimination law applies to employers with 4 or more employees. **OFA is needed to protect employees of small to midsize businesses.**

Housing – Could a person be denied housing based on their sexual orientation and gender identity?

Good

No for now. At the time of the ruling, the *Bostock* decision had no impact on housing discrimination. However, the Biden

administration announced in February 2021 that they will administer and enforce the Fair Housing Act to prohibit discrimination on the basis of sexual orientation and gender identity based on the *Bostock* decision. This interpretation is subject to change.

Best *

No. The Equality Act would explicitly ban anti-LGBTQ discrimination by amending the Fair Housing Act.

Best *

No. The OFA would add sexual orientation and gender identity into Ohio's existing anti-discrimination law.

* Ohioans will benefit the most to have housing and public accommodations non-discrimination laws enshrined in both state and federal law.

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Bostock decision

Equality Act

Ohio Fairness Act

Public Accommodations – Could a person be denied service at a public accommodation (e.g., movie theater, hotel, restaurant, bar, etc.) based on their sexual orientation and gender identity?

Bad

Yes. There are no federal laws that bar discrimination on the basis of sex in public accommodations (except in healthcare) so LGBTQ people would not be free from discrimination.

Best *

No. The Equality Act would explicitly ban discrimination on the basis of sex and LGBTQ status by amending Title II of the Civil Rights Act. The Equality Act would also update the public spaces and services covered under current law to include retail stores, services such as banks and legal services, and transportation services, which strengthen existing protections for everyone.

Best *

No. The OFA would add sexual orientation and gender identity into Ohio's existing anti-discrimination law.

*** Ohioans will benefit the most to have housing and public accommodations non-discrimination laws enshrined in both state and federal law.**

Religious Freedom – Is there any impact on religious freedom?

Neutral

No. The Court did not consider the ability of individuals, businesses and organizations to cite to religious beliefs when contesting government actions such as enforcement of anti-discrimination laws. The *Bostock* decision left a lot of unanswered questions about the ruling's expansion of Title VII's protections and the impact that it may have on protections for religious beliefs and expression. Clarity may not come until there are specific cases that test religious-based exemptions in this new context.

Neutral

No. The Equality Act will not replace the First Amendment's religious freedom protections. Under the Equality Act, religious organizations would retain all the same exemptions they already have under the Constitution and civil rights laws (the Civil Rights Act and Fair Housing Act).

The Equality Act will, however, prevent the use of the Religious Freedom Restoration Act (RFRA) as a defense against claims of discrimination, which ensures that religion cannot be used as a license to discriminate. This legal clarification aligns with the original legislative intent of RFRA.

Neutral

No. The OFA maintains every religious exemption that currently exists in Ohio's nondiscrimination law. This includes the "ministerial exemption" which exempts religious institutions from federal employment discrimination laws that would otherwise be considered discriminatory practice. This means that religious employers have freedom in determining who they hire and/or retain if the role has a religious function. The exemption prevents government interference with religious institutions given the separation of Church and State as written in the First Amendment of the U.S. Constitution.

Religious freedom is protected by the First Amendment and Article 1 of Ohio's Constitution. These laws do not allow for people to impose their beliefs onto others or to discriminate as business owners. Businesses and accommodations/spaces for public use should be open to everyone on the same terms, including members of the LGBTQ community. The OFA ensures that it is the case/that happens.

- ▶ **March 4, 2021: The Ohio Fairness Act is reintroduced**
- ▶ **February 25, 2021: U.S. House passed the Equality Act**
- ▶ **June 15, 2020: The U.S. Supreme Court ruled in *Bostock v. Clayton County***