News



Activists and supporters block the street outside the U.S. Supreme Court in Washington Oct. 8, 2019, as it hears arguments in three major employment discrimination cases on whether federal civil rights law prohibiting workplace discrimination on the "basis of sex" covers gay and transgender employees. (CNS/Reuters/Jonathan Ernst)



by Sarah Salvadore

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Noel Koenke enjoyed her job as director of music for campus ministry at St. Joseph's University, Philadelphia. But a couple of weeks before her wedding to her partner in 2013, Koenke's boss asked her to keep her upcoming nuptials secret, including unfriending university contacts on Facebook.

"I spoke to the VP for mission and said it was causing me anxiety. Am I allowed to have a picture? Can I wear a ring? Can I change my name? If people ask, what do I say?" recalled Koenke, who later filed an human resources complaint alleging discrimination.

Her complaint was dismissed, and for five years, Koenke navigated the situation at work, as she said her mental health suffered. Koenke resigned after seven years in 2017, citing difficult working conditions. On October 2019, she filed a lawsuit alleging workplace discrimination and harassment. An amicus brief was filed March 5, 2020, after St. Joseph's moved to dismiss the case.

Allegations of discrimination against LGBT employees, though not new, still remain an issue in Catholic schools and universities. A recent spate of firings has brought the issue into focus as members of the LGBT community have become more visible and the advent of marriage equality in the United States has made their identity more evident, say advocates.

In the United States, around 4.5% of the population identifies as LGBT — an estimated 11 million people. Among them 88% are employed, according to a recent report by MAP and LGBTQ Workers Center. However, advocates say that a worrying wave of religious exemptions to anti-discrimination laws have left many LGBT employees vulnerable.

Catholic institutions, while affirming of LGBT members, seem to draw a line when it comes to marriage.

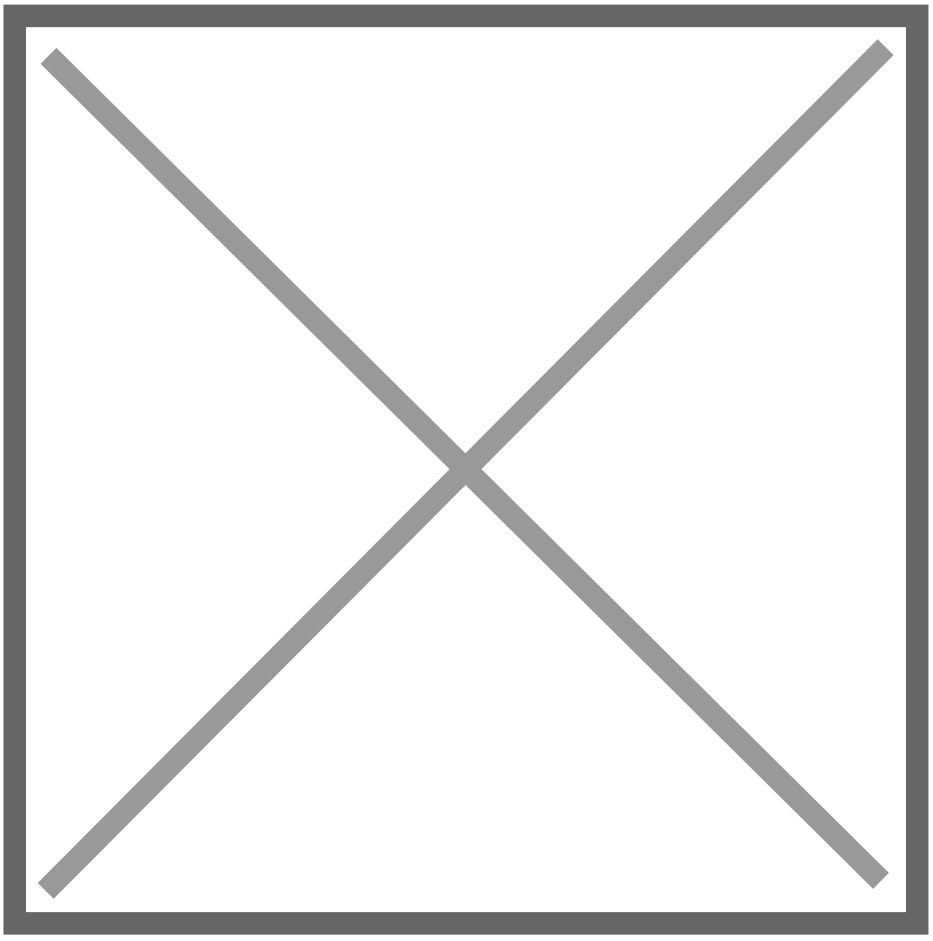
"The leaders of the church have basically been putting their heads in the sand when it comes to the issue of marriage for same-sex partners. And they are not dealing with the issues of married gay and lesbian employees in a sensible way, which leads

to unjust firing," said Francis DeBernado, director of New Ways Ministry, a Catholic LGBT advocacy group.

Advocates say the Catholic bishops have made gender identity, sexual orientation and marriage equality a litmus test for orthodoxy in the church. Recently, the Archdiocese of Cincinnati refused to renew the contract of James Zimmerman, a teacher for 22 years at Archbishop Alter High School in Kettering, Ohio, after his same-sex marriage became public knowledge.

"The sexual intimacy of gay people is always sinful [to the church]. And so, by getting married, they went public, they now are in sin and we [the church] can't support that," said Leslie C. Griffin, professor of law at the University of Nevada, who wrote an amicus brief in Koenke's case.

DeBernardo said that often school and university administrators want to support their staff until the diocese gets involved.



Andrea Vettori and Margie Winters (Provided photo)

One such case involved Margie Winters, who is married to Andrea Vettori and was fired in 2015 from her position as director of religious education at Waldron Mercy Academy in Merion, Pennsylvania, a private Catholic school in the Philadelphia suburbs. The firing came after a power tussle between then Archbishop Charles Chaput, the school and the sponsoring religious community, the Sisters of Mercy.

Winters noted that such firings usually lack transparency. "In my case, the archbishop of Philadelphia consistently denied that he was involved. There was no transparency on the part of the archdiocese. But what was more harmful was the silence with which we were treated," she said.

Chaput released a statement saying that the decision to fire Winters was made without oversight from the archdiocese.

Winters' case received widespread publicity after a parent reportedly complained about her marriage to the school board and the archdiocese. She now works as a service learning coordinator at a private school.

Staying in the closet

The church response has resulted in many LGBT employees remaining closeted in a bid to save their jobs.

A couple of months ago, a post written by an anonymous guest blogger on the New Ways Ministry website went viral. The writer identified himself as a campus minister at a Catholic university and spoke about the struggles of choosing to remain in the closet.

The writer attended a Jesuit school where gay-straight alliances and campus ministry programs were geared directly toward LGBT students, making it a welcoming environment. So, when he began working at a Jesuit college, he thought they would be affirming of LGBT staff as well.

"I was told through other queer Catholic employees and those in campus ministry that being out and working in direct or active ministry is not something that even the most progressive of Jesuit schools would affirm, support or see as reasonable for your employment," the writer told NCR. As a result, he remains careful about his sexual orientation and relationship status.

The pressures of having to remain closeted causes long-term emotional damages, say advocates. LGBT members reported isolation, depression and exhaustion while trying to keep their personal life private.

Koenke told NCR that during her time at St. Joseph's she suffered depression, panic attacks and anxiety. It took a toll on her marriage and caused her hospitalization.

"What drove me into that hospitalization was primarily having to navigate the fear and paranoia that went with trying to keep my life a secret. There's a sense that you have to live as two different people, and it creates a cognitive dissonance," said Koenke.

St. Joseph's, meanwhile, maintains that it did not discriminate against Koenke. "Quite the contrary; we treated her with dignity and respect, which is consistent with our mission and ethos," said Gail Benner, director of public relations at the university. The university refused to comment further, citing ongoing litigation.



Cathy Harmon-Christian (Provided photo)

Winters said she was intentionally closeted while working at her Catholic school. "I was really trying to be quiet about my sexuality. But I was out to the teachers, who knew my partner. After my firing, it became clear how harmful being in the closet was," she said.

Threats to employment even can extend to those who are allies.

Cathy Harmon-Christian, a theology teacher, was fired in November 2019 from Marist School in Atlanta for speaking up against discrimination and racism.

"There is a general lack of following the Gospel, following Jesus, and an acute focus on the catechism in a way that is not very intelligent. There seems to be strong bigotry and a mob mentality to go after LGBTQ people," Harmon-Christian told NCR.

Harmon-Christian's child, who went to the same school and identifies as LGBTQ, was forced to drop out of high school due to bullying.

"If you send your child to a Catholic school, you should expect that your child would be protected from bullying in a way that is systemic. The other interesting thing is I spoke out for students who were LGBTQ, and I ended up getting fired for that."

According to DeBernardo, a common factor emerging in most cases is zealousness of some parents or parishioners who take it upon themselves to police LGBT members. Often, when a person is closeted, their identity is revealed by people who go looking for marriage records.

"When someone makes a complaint, [school administrators] immediately capitulate, instead of defending their staff member," said DeBernardo. He also said that the number of LGBT firings across the country are larger than what's actually reported in the media. "Some are afraid to speak about their firing because they want to remain closeted within their community. It's not easy," he said.

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What does the law say?

Although Koenke has taken the legal route to fighting workplace discrimination, the battle remains an uphill task. Laws create a blanket exemption for religious institutions. Title VII of the 1964 Civil Rights Act prohibits employers from discriminating on the basis of race, color, religion, sex and national origin. However, it does not mention sexual orientation or gender identity.

"Congress has repeatedly rejected attempts to add the term 'sexual orientation' or 'gender identity' to that law. So for the first, roughly 45 to 50 years, courts uniformly interpreted that federal law not to prohibit discrimination based on sexual

orientation. And so, if a plaintiff claim wanted to bring a lawsuit about sexual orientation discrimination, it would clearly fail in federal court," explained Luke Goodrich, vice president and senior counsel at Becket Fund, a non-profit institute that engages on religious liberty issues.

The only recourse, according to Goodrich, would be if the plaintiff lived in the approximately 23 states that adopted employment discrimination laws that included sexual orientation.

Advocates for LGBT rights are also fighting what is known as the ministerial exception, the legal doctrine that religious organizations have a constitutional right to select their own ministers, which has been interpreted as applying to teachers and worship leaders in religious schools.

"If someone is performing an important religious function, their lawsuit is barred no matter what. And so, just as a general matter, there's strong constitutional and statutory protection for religious groups to hire individuals who are fully supportive of their religious missions," said Goodrich.

Griffin, professor of law at University of Nevada, said that religious freedom should not be used as an argument to discriminate.

"The idea of religious freedom is that even if gay marriage is constitutionally required and protected, if you're religiously opposed to it, you're allowed to oppose it. And that's why I say a lot of what religions are arguing in court to protect these days is the right to discriminate," she said.



Noel Koenke (Provided photo)

Griffin said that using the ministerial exception is an "affirmative defense."

"The way they are set up now is that the church gets to say every decision is a religious decision about a minister. And what the ministerial exception does is it frees religions to discriminate against anybody they want," said Griffin.

Koenke's attorney, Justin Robinette, believes the case will turn out favorably.

"We feel very confident that the ministerial exception does not apply to the type of harassment that Noel experienced, that if you hire an individual knowing that they're gay, and you hold the position open to them, knowing they're LGBT, you then don't get to continuously discriminate and harass that person every day during their employment," he said.

Most fired employees often debate the prudence of going to court, given the law almost always sides with religious institutions. Yet, Griffin says, going to court can be helpful in the long run.

Colleen Simon brought a lawsuit against the Diocese of Kansas City-St. Joseph, Missouri, after she was fired her from her job as a food pantry coordinator. After two years, she settled with the diocese for an undisclosed amount. Simon, who is a cancer survivor, told NCR she was broke when she decided to sue.

"Filing a lawsuit may be difficult, but it's important we continue to do it. For no other reason than to remind them that this is not the way of God or the way of Christ … It's a good thing to be a prophet," said Simon, who is married to Lutheran pastor Donna Simon.

DeBernardo says that the church needs to adopt a more pastoral approach in dealing with LGBTQ members.

"Pope Francis stressed on the need for pastoral accompaniment — people who come to church who are not in full accordance with all church teachings, you don't throw them out, you accompany them. Unless this kind of pastoral practice becomes the norm, we'll see more firings," he said.

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