



The POWER 30: Joni Thome

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As pandemic shutdowns occurred, companies began to lay off employees. One company laid off five men at the same time. They just happened to be the oldest employees and those with real or suspected health conditions.

That's the pandemic "cover" under which some companies seek to shelter discrimination, said Minneapolis attorney Joni Thome, who is having a busy year along with her partner, Frances Baillon (see page 4). Their firm receives a number of calls from suddenly unemployed workers. "It is reminiscent of 2007-2008 where businesses used the economy as an excuse [to terminate employment], she said.

If a firm reports over 1,000 cases alleging pandemic-era adverse employment activity (see Christensen, page 6) there are likely as many that have not been filed, Thome said. In her office about 10% of litigation right now is COVID-related. Working from home is a frequent issue and will likely continue to be as the pandemic wanes, when employees may be reluctant to return to the office. Companies may suddenly decide that they don't want people to work from home, she said.

The firm is also seeing an "uptick in general bigotry" resulting in more race inquiries, Thome said. Part of that is the ubiquitous white nationalism of recent years, and part of that is more people not afraid to see racism, she said. "It feels like people have been seeing racism differently and are more able and willing to just say it," she said.

Challenges to discrimination against transgender people "are alive and well," Thome continued. The U.S. Supreme Court ruled recently in *Bostock v. Clayton County* that discrimination against a transgender person was based on sex and thus violated Title VII. That extended protections under federal law already included in the Minnesota Human Rights Act. The MHRA's reference to sexual orientation has been interpreted to include gender discrimination, Thome said.

Social acceptance of transgender people is still an issue in education and employment, Thome said, even though the use of gender-neutral nouns and pronouns is becoming more natural. "In the last six months we've had more inquiries from transgender clients about problems in the workplace," she said.

Thome pioneered litigation over transgender rights in 2001 with *Goins v. West Group*. The Supreme Court then said that forcing Goins to use a separate bathroom, based on complaints from women employees was not sex discrimination. That would not be the result under *Bostock*. Justices Alan Page and Paul Anderson concurred in the result.

What the workplace will look like when business reopens remains to be seen and will require an adjustment that may be difficult for some, Thome said. With that and with the litigation piling up, she said, "We're going to be having some problems."

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