

Alert | Labor & Employment



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Supreme Court Rules Title VII protects LGBT+ Employees from Workplace Discrimination: Practical Implications for Employers

What do a gay child-welfare advocate from Georgia, a transgender funeral home employee from Michigan, and a gay skydiving instructor from New York have in common? According to the Supreme Court of the United States, they were all discriminated against in violation of Title VII of the Civil Rights Act of 1964 (Title VII) when their employers terminated their employment because of their sexual orientation and/or transgender status.

Executive Summary of the Opinion

In a **groundbreaking 6-3 opinion by Justice Gorsuch**, the Supreme Court ruled an employer who fires an individual for being homosexual or transgender violates Title VII's proscription against sex discrimination. *Bostock v. Clayton County, Georgia*, 590 U.S. ___ (2020). And while societal understanding of what "sex" discrimination is may have evolved since Title VII passed in 1964, the plain words of the statute have not: "[a]t bottom, these cases involve no more than the straight-forward application of legal terms with plain and settled meanings. For an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex. That has always been prohibited by Title VII's plain terms."

Significantly, the Majority wrote, “[t]hose who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result...But the limits of the drafters’ imagination supply no reason to ignore the law’s demands. When express terms of a statute give us one answer and extratextual considerations suggest another, there is no contest. Only the written word is the law, and all persons are entitled to its benefit.” Pointedly, the Court stated “[a]s enacted, Title VII prohibits all forms of discrimination because of sex, however they may manifest themselves or whatever other labels might attach to them.” Thus, although homosexuality and transgender status are distinct concepts from sex, discrimination based on these characteristics necessarily entails discrimination based on sex—“the first cannot happen without the second.” And the Majority did not believe it was breaking new ground. It cited *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998) and *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971), in which the Court referred to “sexual harassment” and “motherhood,” respectively, as being conceptually distinct from sex discrimination, yet noted the Court previously and similarly found they too fall within Title VII’s broad sweep.

Practical Implications for Employers & Next Steps

Before the Court’s June 15, 2020, decision, 21 states had laws explicitly mentioning sexual orientation and/or gender identity in their anti-discrimination statutes. After today’s decision, employers in every state must now understand that Title VII protections from sex discrimination also prohibit discrimination against LGBT+ employees. Thus, employers may choose to invest resources to ensure LGBT+ employees are afforded — in practice — the legal protection the law now undisputedly affords. Employers may want to consider offering Respectful Workforce Training — now mandated in many jurisdictions — with an express LGBT+ component.

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