

Supreme Court Rules Title VII Protects LGBTQ+ Individuals from Employment Discrimination

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June 16, 2020

In a landmark ruling, the U.S. Supreme Court held on June 15, 2020 that employment discrimination on the basis of sexual orientation and gender identity is unlawful under Title VII of the 1964 Civil Rights Act. The ruling resolves a longstanding split among federal courts as to whether Title VII's prohibition on sex discrimination applies to members of the LGBTQ+ community. Although many states have already prohibited discrimination on the basis of sexual orientation and gender identity, the Court's ruling is significant, as it affords millions of Americans who identify as LGBTQ+ with protection from job discrimination in all 50 states.

The Court's decision stemmed from separate appeals from three federal appellate courts. The first and title case, *Bostock v. Clayton County, Georgia*, involved a municipal employee terminated for "conduct unbecoming" after he joined a gay softball league. In that case, the Eleventh Circuit had ruled that Title VII does not prevent employers from firing employees because they are gay, and thus dismissed Mr. Bostock's claims as a matter of law. The second case, *Altitude Express, Inc., et al. v. Zarda et al.*, as Co-Independent Executors of the Estate of Zarda, involved a skydiving instructor terminated shortly after he reassured a female customer who was uneasy about being strapped to him during a jump that he was "100% gay." In that case, the Second Circuit came to the opposite conclusion and allowed Mr. Zarda's claims to proceed. The third case, *R. G. & G. R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission et al.*, from the Sixth Circuit, presented a claim of gender identity discrimination. In that case, a funeral home employee who was assigned male at birth and who had presented as male when she began work at the home was terminated after she informed her employer that she would begin presenting as female and using female pronouns. The Sixth Circuit allowed her to proceed on her claim that she was terminated because of her identity as a transgender woman in violation of Title VII.

In a 6-3 decision, the Supreme Court upheld all of the employees' claims. Justice Gorsuch, writing for the Court, explained that employers cannot discriminate on the basis of sexual orientation or gender identity without also unlawfully discriminating on the basis of sex. These categories, by definition, implicate sex. Whether someone is "heterosexual" or "homosexual" depends on whether they are attracted to the opposite sex or their own sex. Likewise, whether someone is "cisgender" or "transgender" depends on whether they identify with their sex assigned at birth, or whether their gender identity conflicts with their assigned sex. Thus, discriminating against someone in any of these categories necessarily requires the employer to treat that employee differently than another employee with the same sexual interest or gender identity but a different assigned sex. Gorsuch wrote that such discrimination is no different from the many other cases where courts have found "sex-plus" discrimination – that is, discrimination where an employer treats men and women with the same characteristic differently.

This decision will not change much for employers in Massachusetts and other states that have already enacted laws against sexual orientation and gender identity discrimination, but it will provide protection from discrimination in the majority of states that have yet to extend their anti-discrimination statutes to cover sexual orientation and/or gender identity. Moreover, given the breadth of the court's opinion, this ruling could precipitate future changes in other areas where federal law prohibits discrimination based on sex. For instance, public accommodations law and fair housing law could likewise be read to protect against discrimination on the basis of sexual orientation and gender identity. In any event, multistate employers should review and update their policies to ensure they comply with the Supreme Court's decision.

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