



Supreme Court Ruling Strengthens LGBT Workplace Rights

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In a landmark decision, the U.S. Supreme Court has held that Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment because of sexual orientation or gender identity, on the grounds that it is a form of sex discrimination. “Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII.” *Bostock v. Clayton County, Georgia*, No. 17-1618 (June 15, 2020).

Until the *Bostock* decision, it was legal in more than half of the states to fire workers for being gay, bisexual or transgender. The vastly consequential decision thus extended workplace protections to millions of people across the nation. Employers should review their anti-discrimination policies and training programs to ensure compliance with Title VII in light of the extended protections that have been granted to LGBT employees.

Background

The Supreme Court issued an opinion on three cases that consider whether it is lawful to fire an individual for being homosexual or transgender. The employee in each case brought suit under Title VII of the Civil Rights Act of 1964, alleging unlawful discrimination on the basis of sex. Title VII outlaws discrimination in the workplace with respect to race, color, religion, sex, and

national origin. The question at hand was whether an employer's discharge of an employee for being homosexual or transgender constitutes sex discrimination under Title VII.

This opinion consolidates three cases: *Bostock v. Clayton County*, *Altitude Express v. Zarda*, and *R.G. & G.R. Harris Funeral Homes v. EEOC*. In *Bostock*, Gerald Bostock brought suit after his employer fired him for his participation in a gay recreational softball league. In *Zarda*, Donald Zarda was fired by his employer days after he mentioned that he was gay. And in *R.G. & G.R. Harris*, Aimee Stephens, who initially presented as a man, was fired after she informed her employer that she would be living and working as a woman.

Supreme Court Decision

Justice Gorsuch delivered the opinion of the Court. Gorsuch begins by noting that those who adopted the Civil Rights Act might not have anticipated its use in this type of case. However, the "written word is law" when looking at the express terms of the statute. Though the parties in these cases dispute the meaning of "sex" under Title VII, Gorsuch writes that the meaning of the word alone is just a starting point. The question is what Title VII says about it. He begins the opinion by defining the term "discriminate against" found in the Act, highlighting that the statute focuses on individuals and not groups.

Next, Gorsuch states that the rule emerging from the ordinary meaning of the statute's language is: "An employer violates Title VII when it intentionally fires an individual employee based in part on sex." It matters not if other factors contributed to the decision to fire an employee if the discharge would not have occurred *but for* that individual's sex. By applying that rule to the cases at hand, Gorsuch states that the resulting message is simple: it is impossible for an employer to discriminate against an employee who is homosexual or transgender without discriminating against that individual on the basis on sex. In other words, discrimination based on LGBTQ status is sex discrimination.

Gorsuch pens two examples to illustrate this ruling. In the first example, an employer has two employees, both of whom are attracted to men. The two individuals are identical except that one is a man and the other is a woman. If the male is fired for no reason other than the fact that he is attracted to men, his employer discriminates against him for traits or actions tolerated in his female colleague. In doing so, the employer violates Title VII. In the second example, an employer has two female employees who are identical except that one identified as female at birth and the other identified as male at birth. If the employer intentionally chooses to fire the transgender person for traits and actions tolerated in the retained employee, it has violated Title VII.

Anti-Discrimination Laws Prior to Ruling

The Supreme Court's ruling follows the trend of increased protections for LGBTQ employees across the United States. Before this ruling, only 22 states and the District of Columbia had implemented state laws protecting LGBTQ Americans from discrimination on the basis of their sexual orientation and gender identity in employment.

Although 28 states did not offer any protections for LGBTQ employees, over 400 cities and counties, including some in these states, had enacted ordinances to prohibit employment discrimination on the basis of gender identity and/or sexual orientation. However, North Carolina, Tennessee, and Arkansas were outliers, prohibiting local or county LGBT discrimination ordinances in the absence of a comparable state discrimination law.

Conclusion

The Supreme Court's decision in *Bostock* is consistent with the growing trend among state and local governments to extend employment discrimination protection to the LGBT community. The Supreme Court concluded that Title VII's broad language makes it illegal for an employer to rely on an employee's sex when deciding to fire that employee. Because of this broad language, Gorsuch concludes that "an employer who fires an individual merely for being gay or transgender defies the law." Chief Justice Roberts joined the opinion, along with Justices Ginsburg, Breyer, Kagan, and Sotomayor. Justice Thomas joined Justice Alito's dissent, and Justice Kavanaugh filed his own dissent as well.