

# Next steps for employers after U.S. Supreme Court's LGBTQ ruling

by Jodi R. Bohr  
Tiffany & Boscoe, P.A.

*The U.S. Supreme Court recently resolved the question of whether Title VII of the Civil Rights Act of 1964, which prohibits discrimination "because of sex," includes bias based on sexual orientation or gender identity. The Court held it does. The 5-4 majority opinion found "it is impossible to discriminate against a person for being a homosexual or transgender without discriminating against that individual on the basis of sex" and in doing so expanded Title VII's protections to cover LGBTQ employees. Read on to learn what employers should be doing in response to the Court's decision.*

### **How we got here**

The Court consolidated three cases for review:

- ***Bostock v. Clayton County, Georgia.*** A longtime Clayton County employee was fired for conduct "unbecoming." He had participated in a gay softball league. The U.S. 11th Circuit Court of Appeals affirmed the dismissal of the employee's Title VII claim because he was allegedly fired based on his sexual orientation, not his "sex." (The Supreme Court's published decision is known as *Bostock v. Clayton County, Georgia.*)
- ***Altitude Express, Inc. v. Zarda.*** A former employee accused his employer of terminating him because he told a client he is gay. The 2nd Circuit sided with the fired worker and decided Title VII prohibits sexual orientation discrimination, creating a split among the circuit courts.
- ***R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC.*** A transgender worker presented as a

male during the first six years of employment. The employee was terminated after informing the employer she was transitioning and planned to "live and work full-time as a woman." The 6th Circuit found discrimination based on transgender and transitioning status violates Title VII.

### **Best practices**

**Personnel policies.** Be prepared to update your existing policies and practices. For starters, your harassment and discrimination policies must be modified to reflect the expanded protection.

Other workplace policies (e.g., your dress code), benefits plans and offerings, diversity and inclusion initiatives, and recruitment processes also should be reviewed to avoid possible disparate impact or treatment claims.

**Employee and supervisor training.** After publishing the updated policies, you should provide training. Make a clear statement that all employees are welcomed and supported.

In separate training, managers should be reminded they are responsible for following and enforcing your policies to maintain a harassment-free workplace. The training will help them remain vigilant in spotting any resistance to expanding the protections.

### **Stay tuned**

The Supreme Court's ruling acknowledged it created more questions than answers. The decision doesn't provide any practical guidance to employers on a number of issues that may arise in the workplace. The most sensitive issue remains

gender-specific restrooms, which will likely result in further litigation before a resolution is reached.

*[Jodi R. Bohr](#) is a shareholder with [Tiffany & Bosco, P.A.](#) She practices employment and labor law, with an emphasis on litigation, class actions, and HR matters, and is a frequent speaker on a wide range of employment law topics. She may be reached at [jrb@tblaw.com](mailto:jrb@tblaw.com) or 602-255-6082.*