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U.S. Supreme Court Holds Title VII Protects LGBTQ Employees

Earlier this month, the U.S. Supreme Court issued its opinion resolving the question regarding whether Title VII of the Civil Rights Act of 1964, which prohibits discrimination "because of sex," includes discrimination based on sexual orientation or gender identity. The Supreme Court held that it does. The Supreme Court found that "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 protections to LGBTQ employees.

Biography

Three cases consolidated for review

- *Bostock v. Clayton County, Georgia:* the plaintiff, a longtime Clayton County employee was firedfor conduct "unbecoming." The employee had participated in a gay softball league. The 11th Circuit affirmed the dismissal of the employee's Title VII claim because he was allegedly fired due to his sexual orientation, not because of his "sex." The published decision is known as *Bostock v. Clayton County, Georgia*.

- *Altitude Express, Inc. v. Zarda*: involved another claim based on sexual orientation. In that case, a former employee accused his employer of terminating his employment because he told a client he was gay. The 2nd Circuit held that Title VII prohibits discrimination based on sexual orientation, creating a split among the Circuit courts.

- *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC:* involves a transgender worker who presented as male during the first six years of employment. The employee was terminated after informing her employer that she was transitioning and planned to "live and work full-time as a woman." The 6th Circuit held that discrimination on the basis of transgender and transitioning status violates Title VII.

Best practices

Arizona had not amended its Civil Rights Act to expressly prohibit employment discrimination on the basis of sexual orientation and gender identity or expression, so this decision broadly expands the civil rights protections afforded to LGBTQ employees. Employers should be prepared to update their existing policies and practices. To start, the anti-harassment and anti-discrimination policies must be modified to reflect the expanded protection. Other workplace policies, such as a dress code policy, benefits policies and offerings, diversity and inclusion initiatives, and recruitment processes should also be reviewed to avoid possible disparate impact or treatment claims.

After publishing updated policies, employers should provide training. Make a clear statement that all employees are welcomed and supported. Managers should have separate training and should be reminded that they are responsible for following and enforcing policies to maintain a harassment-free workplace. Training will help managers remain vigilant in spotting any resistance to expanding these protections.

The Supreme Court's ruling acknowledged that it created more questions than answers. The Court's decision does not provide any practical guidance to employers on a number of potential issues that may arise in the workplace. The most sensitive of issues remains gender-specific restrooms. These matters will likely result in further litigation before reaching a resolution on the issue.

We encourage employers who have specific questions about the impact of the Supreme Court's ruling to contact me at Tiffany & Bosco at jrb@tblaw.com or (602) 255-6082.

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