

UNITED STATES SUPREME COURT EXTENDS TITLE VII PROTECTIONS TO LGBT EMPLOYEES

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On June 15, 2020, the Supreme Court of the United States handed LGBT employees a hard-fought victory. In a trio of consolidated cases captioned as *Bostock v. Clayton County, Georgia*, the Court found that Title VII's prohibitions against workplace discrimination "because of ... sex" extend to prohibit discrimination on the basis of sexual orientation or gender identity. Title VII applies to private and public sector employers of 15 or more people, including the federal government, labor unions, and employment agencies. Consequently, many employers are now prohibited from taking adverse action against employees on the basis of sexual orientation or gender identity. In this context, adverse action encompasses not just termination, but any negative impact on pay, training, job titles, or responsibilities.

All sides agreed that Congress did not contemplate LGBT protections when it passed the landmark Civil Rights Act in 1964. Still, the prohibition on discrimination "because of ... sex" meant that sex could not be a factor in an adverse employment action under the law's but-for causation standard. Considering that an "employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex," the Court concluded that "[s]ex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

The Court reasoned:

Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee's sex, and the affected employee's sex is a but-for cause of his discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee's sex plays an unmistakable and impermissible role in the discharge decision.

Because an employer cannot discriminate against a gay or transgender employee without that individual's sex being a factor in the adverse action, Title VII provides a "simple and momentous" directive: "An individual's homosexuality or transgender status is not relevant to employment decisions."

It mattered not that Congress did not intend to extend such protections to LGBT employees; only the text of the law mattered. And previous Court decisions had relied upon the text of the statute in extending Title VII protections to circumstances not anticipated by Congress, such as same-sex sexual harassment. *See Oncale v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75 (1998). To depart from the "simple" but-for analysis applied in other Title VII cases involving unique claims of sex-based discrimination, the Court reasoned, would "create a curious discontinuity in our case law."

Justice Gorsuch wrote the opinion for the Court. Gorsuch was joined by Chief Justice Roberts and Associate Justices Ginsburg, Breyer, Sotomayor, and Kagan. Only Justices Alito, Kavanaugh, and Thomas dissented.

ADDITIONAL INFORMATION

For more information, please contact:

- **[Chad M. Eggspuehler](mailto:chad.eggspuehler@tuckerellis.com)** | 216.696.5919 | chad.eggspuehler@tuckerellis.com
- **[Christine M. Snyder](mailto:christine.snyder@tuckerellis.com)** | 216.696.5593 | christine.snyder@tuckerellis.com
- **[Ndubisi Ezeolu](mailto:ndubisi.ezeolu@tuckerellis.com)** | 213.430.3239 | ndubisi.ezeolu@tuckerellis.com
- **[Melissa Z. Kelly](mailto:melissa.kelly@tuckerellis.com)** | 216.696.2067 | melissa.kelly@tuckerellis.com

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