

The U.S. Supreme Court Rules LGBTQ+ Employees Are Protected From Workplace Discrimination Under Title VII

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On Monday, June 15, 2020, the U.S. Supreme Court – in a 6-3 landmark ruling – held that Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination against employees who are a part of the LGBTQ+ community.[1] Although many employers in the United States already prohibit discrimination on the basis of sexual orientation and gender identity, employers who have not yet afforded protection to LGBTQ+ employees should review and update their employment policies and procedures to make sure they are legally compliant.

Supreme Court Decision

The Court focused on the meaning of “sex” under Title VII and concluded that “sex” includes an employee’s sexual orientation and gender identity. The Court explained:

For an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex. That has always been prohibited by Title VII’s plain terms

In reaching its conclusion, the Court utilized an example in which two employees, both of whom are attracted to men, work for the same employer. To the employer, the individuals are essentially identical, with the exception that one is a male and the other a female. If the employer fires the male employee for no reason other than that the employee is attracted to men, the employer has discriminated against the male employee for actions that it tolerates from its female employee. The employer has effectively engaged in sex discrimination by treating men differently than women.

The court extended this rationale to transgender employees. If an employer has two employees – one who is transgender and identified as male at birth but now identifies as female and another who is not transgender and has identified as female since birth – but fires only the transgender employee despite the fact that the transgender employee is otherwise identical to the non-transgender employee in all material aspects, the employer has intentionally punished a person who identified as male at birth for actions that the employer tolerates from another employee who identified as female at birth. Thus, sex was the factor that led to the discharge of the terminated employee.

The decision also assured that certain circumstances would not present barriers for individuals pursuing sexual orientation and gender discrimination based claims pursuant to Title VII. For example, the decision clarified that Title VII workplace protections against sex discrimination apply to discrimination against particular individuals and not against groups. Thus, Title VII protects individuals who are discriminated against on the basis of sex even if an employer’s policies themselves are not discriminatory. Further, the decision stated that “the plaintiff’s sex need not be the sole or primary cause of the employer’s adverse action” for Title VII to apply.

Dissenting Opinions

The dissenting justices' opinions were mainly based on a "strict constructionist" interpretation of Title VII. These justices concluded that in 1964, at the time the Civil Rights Act became law, Congress would not have intended the word "sex" to include sexual orientation or gender identity. The majority criticized the dissent as ignoring the plain language of the statute and for taking the position that "[w]hen a new [statutory] application is both unexpected and important, even if it is clearly commanded by existing law, the Court should merely point out the question, refer the subject back to Congress, and decline to enforce the law's plain terms in the meantime."

Future Implications

Many states and municipalities already have statutes barring discrimination based on sexual orientation and gender identity. For example, in New York, the Sexual Orientation Non-Discrimination Act (SONDA) prohibits discrimination on the basis of actual or perceived sexual orientation in various settings – including the workplace. In February 2019, the Gender Expression Non-Discrimination Act (GENDA) explicitly added protections for transgender and gender non-conforming people in New York. The Supreme Court decision now makes it possible for employees in states and municipalities that already provide these types of protections barring discrimination based on their sexual orientation or gender identity to pursue federal claims as well.

Employers in states or municipalities that had not previously prohibited discrimination based on sexual orientation or gender identity will need to review and revise their policies and practices to ensure they comply with the Supreme Court's decision. Further, even employers that have policies protecting LGBTQ+ employees from discrimination in the workplace may find it beneficial to educate themselves on gender identity and expression issues. Finally, employers must provide a workplace that is free of harassment based on sex—including sexual orientation and gender expression.

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[1] The Court issued its opinion in three consolidated cases: *Bostock v. Clayton County, Georgia*, No. 17-1618; *Altitude Express Inc. v. Zarda*, No. 17-1623; and *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC*, No. 18-107. Justice Neil Gorsuch wrote the majority decision, which was joined by Chief Justice Roberts and Justices Bader Ginsburg, Breyer, Sotomayor, and Kagan. Justices Thomas, Alito, and Kavanaugh dissented.

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