

Supreme Court Prohibits Discrimination Against Gay and Transgender Employees

In a landmark decision with wide implications nationwide, the Supreme Court has ruled that Title VII of the Civil Rights Act of 1964 prohibits discrimination against employees on the basis of their sexual orientation or gender identity.

Title VII prohibits employers from discriminating against employees on the basis of race, color, religion, sex, or national origin. In *Bostock v. Clayton County, Georgia*, the Court extended its interpretation of discrimination based on "sex" to encompass the related concepts of sexual orientation and gender identity.

Writing for a 6-3 majority, Justice Neil Gorsuch concluded that it was "impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex," among other reasons because such discrimination inevitably involves adverse action based on "traits or actions [an employer] would not have questioned in members of a different sex."

Consequently, all gay and transgender employees in the United States now enjoy the same protections against discrimination as other classes of employee covered by Title VII. Crucially, this protection also extends to employees who are perceived to be gay or transgender as well.

Since nearly half of the states already prohibit discrimination against employees on the basis of sexual orientation and transgender identity, many employers will not see an immediate impact from the Supreme Court's ruling. For example, in Massachusetts, discrimination on the basis of sexual orientation has been unlawful since 1989 and discrimination on the basis of gender identity has been prohibited since 2011. But *Bostock* will have an immediate impact on employers elsewhere.

It will almost certainly have an important impact beyond Title VII. For example, the Trump administration recently did away with Obama-era regulations that prohibited discrimination against gay and transgender individuals relating to health care and health insurance provided under the Affordable Care Act. That and similar regulatory decisions are now subject to serious question.

All of the implications that will follow from yesterday's ruling are not yet clear. For example, the effect, if any, it will have on sexually differentiated employee facilities such as bathrooms and locker rooms is an issue that will be resolved by the lower courts. But employers would be well-advised to pay close attention to this developing area of the law.

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of the Bostock ruling, legal protections for LGBTQ individuals, or employment law issues generally, please contact Michael Brier at (617) 350-6800, or email him at michael.brier@gesmer.com.



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