

# Supreme Court Rules LGBTQ Employees are Protected from Job Discrimination

By Nathan Pangrace

The U.S. Supreme Court ruled on Monday that federal law protects gay, lesbian, and transgender people from discrimination in employment. The case, *Bostock v. Clayton County, Georgia*, involved Title VII of the Civil Rights Act of 1964, which bars employment discrimination based on race, religion, national origin, and sex. The Court addressed the question of whether Title VII's prohibition of discrimination "because of sex" applies to LGBTQ employees.

Attorneys for the employees argued that discrimination based on sexual orientation or transgender status must, as a matter of logic, take sex into account. In response, employers argued that the common understanding of sex discrimination when the law was written in 1964 was bias against women or men only and that Congress was required to pass a new law to protect gay and transgender workers.

Writing for the 6-3 majority, Justice Neil Gorsuch stated, "[a]n 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. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids." For example, the Court reasoned, if an employer fires a male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions that it tolerates in his female coworkers.

In his dissent, Justice Samuel Alito wrote, "[t]he Court tries to convince readers that it is merely enforcing the terms of the statute, but that is preposterous. Even as understood today, the concept of discrimination because of 'sex' differs from discrimination because of 'sexual orientation' or 'gender identity.'" Justice Brett Kavanaugh wrote in a separate dissent that the Court was rewording the law to include gender identity and sexual orientation, a responsibility that belongs with Congress.

The Court's decision dealt with three consolidated cases. In one, Gerald Bostock was fired from his job as a child welfare advocate with Clayton County, Georgia after he joined a gay softball league. In a second case, Donald Zarda was fired from his job as a skydiving instructor in New York when he told a customer he was gay. In the third case, Michigan funeral home worker Aimee Stephens was fired after she told her employer that she would be identifying as a woman.

Employers should immediately update their employee handbooks and HR policies to reflect the Court's ruling in *Bostock*. Sexual orientation or transgender status are now protected classes along with race, national origin, age, disability and others. Equal opportunity, anti-harassment, and diversity policies should be revised accordingly.

Should you have any questions, please contact one of the listed Roetzel attorneys.

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