

Supreme Court: Title VII Protects LGBTQ+ Employees

By Michelle E. Phillips and Christopher M. Repole

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The U.S. Supreme Court has held that LGBTQ+ employees are protected from workplace discrimination under Title VII of the Civil Rights Act of 1964.

The Court issued its decision 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. (For background on the three cases, see our article, [U.S. Supreme Court to Hear Arguments on LGBTQ+ Workplace Protections under Title VII.](#))

Justice Neil Gorsuch wrote the majority decision finding Title VII's protection extends to sexual orientation and gender identity. He was joined in the majority by Chief Justice John Roberts, and Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan. Justices Clarence Thomas, Samuel Alito, and Brett Kavanaugh dissented.

While the scope of the Court's decision will be debated, its implications for workplaces across the country likely will be significant. The decision provides consistency and may require reversal of many measures that effectively allow discrimination based on sexual orientation or gender identity.

Supreme Court Decision

The Court ruled Title VII's ban on "sex"-based discrimination prohibits discrimination based on sexual orientation. It also ruled Title VII prohibits discrimination against transgender claimants based on their transgender status. Justice Gorsuch wrote, "When an employer fires an employee for being homosexual or transgender, it necessarily intentionally discriminates against that individual in part because of sex [in violation of Title VII]."

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.

The dissenting justices' opinions largely relied on a "strict constructionist" interpretation of Title VII, finding the law's prohibition against "sex"-based discrimination was not intended in 1964 to extend to sexual orientation or gender identity. Justice Gorsuch characterized that view as improperly holding that, where any "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."

Justice Gorsuch wrote, "This Court has long rejected that sort of reasoning." Instead, he stated, "The statute's message for our cases is equally simple and momentous: An individual's homosexuality or transgender status is not relevant to employment decisions. That's because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

By finding Title VII bars workplace discrimination on the basis of sexual orientation and gender identity, the Court's decision effectively extends that prohibition to state and local jurisdictions that were silent on the topic or explicitly allowed such discrimination.

However, it is unclear how cases where employers claim religious liberty objections will be affected. The Court's decision does not resolve the tension between workplace "religious freedom" laws and Title VII as the litigants in *Bostock*, *Zarda*, and *R.G. & G.R. Harris* did not raise religious freedom objections on appeal. As the Court stated, "[H]ow these doctrines protecting religious liberty interact with Title VII are questions for future cases"

Implications

The Court's decision will significantly affect other court cases, federal and state legislation, and even elections.

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The Court's decision largely aligns with the Equal Employment Opportunity Commission's (EEOC) position that discrimination based on sexual orientation and gender identity is prohibited under Title VII. While Circuit Courts, the U.S. Department of Justice, and many district courts had reached contrary decisions, the Court's decision likely invalidates many of those.

The Court's decision makes it more likely that adverse employment actions against LGBTQ+ workers would be found unlawful. As the federal agency that handles investigations into workplace discrimination, the EEOC already was receiving an increasing number of claims and pursuing increasing monetary awards in sexual orientation and gender identity discrimination cases. The agency likely will be emboldened to commence many more such lawsuits against employers in federal court.

It remains to be seen how courts will apply this prohibition where employers voice religious objections in decisions involving LGBTQ+ workers. Nonetheless, the EEOC likely will intensify its pursuit of awards for workers in such cases.

Employers should continue to promptly and thoroughly investigate all complaints of LGBTQ+ discrimination and take remedial action in response to discrimination. Gender identity and sexual orientation harassment should be prohibited under company anti-harassment policies and staff should be trained on the prevention of LGBTQ+ discrimination. It is equally important that managers are sensitized on how to respond to LGBTQ+ discrimination complaints, including the duty to report LGBTQ+ discrimination when placed on actual or constructive notice of discrimination and harassment.

Please contact a Jackson Lewis attorney with any questions about the Court's decision, anti-harassment policies, workplace training for management and employees, and other preventive practices.

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