

U.S. Supreme Court Issues Landmark Decision Providing Discrimination Protections to LGBTQ Workers

Labor & Employment Law Update

By John Hayes on June 15, 2020

On June 15, 2020 the United States Supreme Court handed down a momentous decision ruling that Title VII of the Civil Rights Act of 1964 ("Title VII") protects gay and transgender employees from workplace discrimination. The decision consolidated three cases where the employees were terminated from their jobs: two separate cases involving the terminations of gay employees; and one case involving the termination of a transgender employee.

The vote was 6 to 3, with Justice Neil M. Gorsuch writing the majority opinion. He was joined by Chief Justice John G. Roberts Jr. and Justices Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor and Elena Kagan. Justice Alito wrote a dissent joined by Justice Thomas, and Justice Kavanaugh wrote a separate dissent.

Title VII bars employment discrimination based on race, religion, national origin and sex. The question for the justices was whether discrimination "because of sex" applies to gay and transgender workers. While most federal appeals courts interpreted Title VII to exclude sexual orientation discrimination, both the Second Circuit Court of Appeals (in New York) and the Seventh Circuit Court of Appeals (in Chicago) had previously ruled that discrimination based on sexual orientation is a form of sex discrimination.

Writing for the majority, Justice Gorsuch stated:

An employer who fired 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.

...

In Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee's sex when deciding to fire that employee. We do not

hesitate to recognize today a necessary consequence of that legislative choice: an employer who fires an individual merely for being gay or transgender defies the law.

Currently 22 states, including Illinois, have their own laws prohibiting job discrimination based on sexual orientation or gender identity. While these laws remain in force, the Supreme Court's ruling means federal law now provides similar protections for LGBTQ employees in the rest of the country.

Employers throughout the United States must now be aware that federal employment law (noting that Title VII covers *only* employers with 15 or more employees) prohibits discrimination against gay and transgender employees. The upside is that employers will no longer have to navigate inconsistent laws that vary from state to state and it will also likely make employee training easier and more consistent for employers operating in multiple states. Employers should update their discrimination and harassment policies to make sure gay and transgender employees are included in anti-discrimination protections.

It should also be noted that, for most employers, attempting to justify an employment action against gay or transgender employees on religious grounds will not be a successful avenue of defense. The so-called "ministerial exemption" is very narrowly tailored to cover only churches and religious institutions, and applies only to employees performing a "ministerial" role within the institution.

The takeaway for the vast majority of employers is that it is now crystal clear that Title VII's prohibitions on discrimination based on sex include gay and transgender individuals.

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