

Landmark Supreme Court Decision Protects LGBTQIA+ Employees Under Title VII of the Civil Rights Act

On June 15, 2020, the Supreme Court held in a [monumental decision](#) that an employer who discriminates against an employee or applicant based on that individual's gender identity or sexual orientation violates Title VII of the Civil Rights Act.

Title VII prohibits employment discrimination on the basis of race, color, religion, sex or national origin. In today's decision, *Bostock v. Clayton County, Georgia*, the Supreme Court held that an employee's gender identity and sexual orientation are inextricably connected to the employee's "sex," and are, therefore, covered by Title VII.

Justice Neil Gorsuch, writing for the Court, held that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." As an example, the Court considered a hypothetical employer that has two employees, both of whom are attracted to men. The two employees are material in all respects, except that one is male and the other is female. According to the Court, if the employer fires the male employee for no reason other than the fact that he is attracted to men, "the employer discriminates against him for traits or actions it tolerates in his female colleague." In this way, sex "plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

Furthermore, an employee's gender identity or sexual orientation "need not be the sole or primary cause of the employer's adverse action." An employer "cannot avoid liability just by citing some other factor that contributed to its challenged employment decision." Therefore, if the individual's gender identity or sexual orientation was one cause of the adverse employment decision, the employer violates Title VII.

As the Court noted in the *Bostock* decision, the application of Title VII to gender identity and sexual orientation is both "equally simple and momentous." Although gender identity and sexual orientation are already protected under New York law, the Supreme Court's decision explicitly protects employees from discrimination based on gender identity and sexual orientation under federal law. Thus, for the first time, employees are able to bring claims against their employers on these bases in federal court. Even in states that have long protected these employees, the avenue for federal claims opens employers up to potential increased liability.

Employers should take steps to ensure that employees are protected on the basis of gender identity and sexual orientation in their workplaces. Employers in New York likely already include these protected categories in their non-discrimination and equal employment opportunity policies because the New York Human Rights Law prohibits discrimination on these bases, but this would be a good opportunity to review and update such policies if necessary. Employers may also consider some specialized training for employees and supervisors on these topics.

If you have any questions regarding this decision or its implications for your workplace, please contact [Theresa Rusnak](#), or the attorney at the firm with whom you are regularly in contact.



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