

U.S. Supreme Court Rules that Sexual Orientation and Gender Identity are Protected under Title VII

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The June 15, 2020 landmark U.S. Supreme Court (“SCOTUS”) decision in [Bostock v. Clayton County](#) put an end to the question of whether sexual orientation and gender identity are protected categories under Title VII of the Civil Rights Act of 1964 (“Title VII”).

The SCOTUS faced the same controversy in three consolidated cases as to whether an employer engages in prohibited employment discrimination under Title VII when it fires an employee for being gay or transgender. Justice Neil Gorsuch’s 6-3 majority opinion held in the affirmative and extended the protections of Title VII to gay, homosexual and transgender employees.

Title VII outlaws discrimination in the workplace based on race, color, religion, sex, or national origin. The employers in [Bostock](#) contended, in a restrictive view of the definition of “sex”, that discrimination against employees because of their homosexual or transgender status is not a basis for Title VII liability. Nonetheless, in a highly awaited Opinion, the SCOTUS explained that a Title VII violation occurs when an employer relies in part on an individual employee’s sex to decide whether to discharge the employee.

Because homosexuality and transgender status are inextricably bound up with sex, sex plays a necessary and undisguisable role in the decision to penalize an employee for being homosexual or transgender. Therefore, when an employer fires an employee because of the employee’s sexual orientation and/or gender identity, two factors are in play: the individual’s sex and the sex to which the individual is attracted or with which the individual identifies. In other words, the employer penalizes the individual for traits or actions it would not have questioned in members of a different sex, and in so doing, it engages in prohibited employment discrimination.

In Puerto Rico, Act 22-2013 has provided specific protection to employees against discrimination in employment because of their sexual orientation or gender identity since 2013. However, the decision in [Bostock v. Clayton County](#) recognizes this protection under federal law, impacting thousands - if not

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millions - of employees who were not previously protected under the laws of their respective states. Moreover, the Bostock decision extends the rights of gay, lesbian, and transgender employees in Puerto Rico by providing them with a new federal cause of action in cases where their only recourse until now was the local Court.

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