

U.S. Supreme Court Rules that Federal Law Forbidding Workplace Discrimination Protects LGBTQ+ Workers

Alert

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By Ashley Dillon and Sara Welch

On June 15, 2020, the U.S. Supreme Court held in a 6-3 ruling that “an employer who fires an individual merely for being gay or transgender violates Title VII” of the Civil Rights Act of 1964. Justice Neil Gorsuch, who was appointed by President Donald Trump in 2017, authored the majority opinion. Chief Justice Roberts as well as Justices Ginsburg, Breyer, Sotomayor and Kagan joined Justice Gorsuch’s opinion. Justice Alito filed a dissenting opinion, which Justice Thomas joined. Justice Kavanaugh filed a separate dissent.

The Court issued a single opinion addressing three cases asking whether Title VII’s prohibition on sex discrimination includes discrimination on the basis of sexual orientation and gender identity. Title VII makes it “unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual’s race, color, religion, sex or national origin.” 42 U. S. C. §2000e-2(a)(1). The legal fight in each of these three cases focused on the definition of “sex” in Title VII and whether that prohibition on discrimination “because of sex” extends to discrimination based on gender identity or sexual orientation.

In two of the cases, the former employees contended they were fired from their jobs because they are gay. Donald Zarda had been working as an instructor for a skydiving company now known as Altitude Express when he was terminated after mentioning that he was gay. Gerald Bostock had worked as a child-welfare services coordinator in Clayton County, Georgia when he was fired shortly after he began participating in a gay recreational softball league. In the third case, Aimee Stephens, who presented as male when she was hired, was fired by her employer R.G. & G.R. Harris Funeral Homes after she informed her employer that

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she planned to “live and work full-time as a woman.” Each of these employees sued their former employers, alleging sex discrimination under Title VII. The Eleventh Circuit held Title VII does not prohibit employers for firing employees for being gay, and so concluded that Bostock’s suit could be dismissed as a matter of law. The Second and Sixth Circuits, however, allowed the claims of Zarda and Stephens, respectively, to proceed.

In sum, the Supreme Court concluded: “We must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An 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.” Because Title VII applies to private employers and state and local governments with 15 or more employees, as well as all federal employees, we encourage employers to review their policies to ensure they prohibit discrimination on the basis of sexual orientation and gender identity.

For more information on the new ruling, please contact [Ashley Dillon](#), [Sara Welch](#), [Pat Konopka](#), [Stephanie Scheck](#), Nicole Faulkner, [Sharon Ng](#), Kristin Berger Parker, [Kevin Robinowitz](#), [Bernadette Sargeant](#), Johnny Wang or the Stinson LLP contact with whom you regularly work.

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