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# Title VII Protection Extends to LGBTQ Employees

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On Monday, the U.S. Supreme Court by a vote of 6-3 held that Title VII of the Civil Rights Act of 1964 provides coverage from discrimination for gay and transgender individuals. The landmark decision provides protection against discrimination for members of the LGBTQ community, who, prior to the ruling, were without legal protection in more than half the states. Justice Gorsuch was joined by Chief Justice Roberts and Justices Ginsburg, Breyer, Sotomayer, and Kagan.

The case, *Bostock vs. Clayton County*, arose when Gerald Bostock was fired from his job as a child welfare advocate after he joined a gay softball league. 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 with respect to his compensation, terms, conditions, or privileges of employment, *because of* such individual’s race, color, religion, *sex*, or national origin.” (emphasis added). The issue in *Bostock* was whether under Title VII the term “sex” referred only to the biological distinction between male and female.

In *Bostock*, the Court looked to the statute’s prohibition on discrimination “because of” sex and found that it is unlawful to terminate an employee because the employee is homosexual or transgender because it “is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” Writing for the majority, Justice Gorsuch said that “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.” “For an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex. That has always been prohibited by Title VII’s plain terms.”

In his dissent, Justice Kavanaugh said that he believed ensuring Title VII’s protections were afforded to members of the LGBTQ community “was Congress’s role.” However, Justice Kavanaugh noted “[m]illions of gay and lesbian Americans have worked hard for many decades to achieve equal treatment in fact and in law. They have exhibited extraordinary vision, tenacity, and grit – battling often steep odds in the legislative and judicial arenas, not to mention in their daily lives. They have advanced powerful policy arguments and can take pride in today’s result.”

The Court declined to address the employers’ concerns that “sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable” or that protecting members of the LGBTQ community may conflict with the employers’ religious beliefs, noting that those issues were not before the court. Justice Alito, in dissent, said that “although the court does not want to think about the consequences of its decision, we will not be able to avoid those issues for long.” The Court could have the opportunity to rule on those issues in the near future, as there are cases raising such issues currently being litigated in a number of courts. Thus, while this decision extends coverage of Title VII to gays and transgender individuals, there remain a number of undecided issues that could have a significant impact on the Court’s holding in this case.

Should you have any questions about the *Bostock v. Clayton County* decision or Title VII generally, please contact Denis Jacobson

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