

Supreme Court Rules: Title VII Protects Gay and Transgender Employees

June 15, 2020

On June 15, 2020, the Supreme Court, in a 6-3 decision, held that Title VII prohibits employers from discharging or otherwise taking an adverse employment action against an employee solely because the employee is gay or transgender.

In April 2019, the Supreme Court agreed to review a trio of cases – *Bostock v. Clayton County, Georgia*, *Altitude Express, Inc. v. Zarda*, and *R.G. & G.R. Harris Funeral Homes v. EEOC* – to address the rights of LGBT employees under Title VII of the Civil Rights Act of 1964. Two of these cases involved employees who were terminated because they were homosexual. In the third, an employee who initially presented as a male was terminated after telling the employer that she identified as a woman and wanted to wear women's clothing to work. The employees in all three cases brought suit under Title VII, alleging unlawful discrimination on the basis of sex.

The Supreme Court, consolidating the cases for decision, held that Title VII prohibits an employer from discharging, terminating, or otherwise taking adverse action against an employee for being homosexual or transgender. Writing for the majority, Justice Neil Gorsuch reasoned that the ordinary meaning of the Title VII language mandates a ruling that when an employer intentionally takes adverse action against an employee because of the employee's sexual orientation or gender identity, the employer is engaging in unlawful discrimination "because of sex." Relying strictly on the plain language of Title VII, Justice Gorsuch declined to take up the employers' arguments based on legislative history and policy. Justice Gorsuch ruled that while it was undoubtedly true that the drafters of Title VII in 1964 might not have envisioned the statute being applicable to homosexual and transgender persons, the statutory text is unambiguous in the application of the law to the facts of these cases. Chief Justice John Roberts and the four Democrat-appointed Justices joined in the decision.

What does this mean for employers? Given the breakdown of the votes, including two relatively recent Republican appointees, it is likely that this matter is legally settled for the time being. Therefore, employers should check their policies to make sure they now include prohibitions against discrimination and harassment on the basis of sexual orientation and gender identity, and should train their employees accordingly.