

Workplace Discrimination Against LGBTQ Employees Is Prohibited by Federal Law

06.17.2020

ATTORNEYS

Rebecca Green

Workplace discrimination against employees based on their sexual orientation or transgender status violates Title VII of the Civil Rights Act of 1964, the U.S. Supreme Court ruled on Monday. The Civil Rights Act prohibits employers from taking adverse action against employees or applicants “because of” race, color, religion, sex, or national origin.

The case, *Bostock v. Clayton County, Georgia*, involved three consolidated matters, in which two gay men and a transgender woman were fired after their employers learned of their LGBTQ status. The employers did not contend that the employees were discharged for any other reason. The case focused on the question of whether adverse employment actions based on sexual orientation or transgender status were taken “because of” sex.

Since 1964, the interpretation of sex-based discrimination under Title VII has expanded to include, among other things, adverse employment actions based on pregnancy and motherhood, as well as sexual harassment of male employees. The Court noted that although the authors of the Civil Rights Act may not have contemplated the protection of LGBTQ individuals in the prohibition of workplace discrimination based on sex, “the limits of the drafters’ imagination supply no reason to ignore the law’s demands.” The Court held that because, like the examples above, discrimination against gay or transgender employees is at least partly “because of” their sex, the law demands that employers not treat employees adversely because of their LGBTQ status.

In California, the Fair Employment and Housing Act (“FEHA”) protects employees from discrimination based on sexual orientation, gender identity, and gender expression, including transgender status. Additionally, California employers must allow an employee to use the restroom that corresponds with the employee’s gender identity or gender expression, use an employee’s preferred name and pronoun, and allow an employee to wear clothes and hairstyles that are consistent with the employee’s gender identity or gender expression. California employers that are in compliance with state law protecting LGBTQ workers therefore do not have to change their practices to

comply with Title VII. Most workplace discrimination lawsuits in California are brought under the FEHA; however, actions brought under federal law do occur, and may now be brought to protect employees from discrimination based on LGBTQ status.

If you have any questions, please contact **Rebecca Green**.