**U.S. Supreme Court Rules LGBTQ Individuals are Protected   
From Workplace Discrimination Pursuant to Title VII of the Civil Rights Act**

**by Michelle High**

This week a 6-3 decision authored by Justice Neil Gorsuch was issued by the United States Supreme Court, holding that Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination, applies to discrimination based on sexual orientation and gender identity.

The applicability of Title VII to employment matters involving sexual orientation and gender identity came before the Court in Bostock v. Clayton County, Georgia, No. 17-1618, a case involving three consolidated appeals out of the Eleventh, Second and Sixth Circuits. In *Gerald Lynn Bostock v. Clayton County, Georgia* No. 17-1618, and *Altitude Express, Inc., et al. v. Melissa Zarda, et al.*, No. 17-1623, gay men had asserted violations of Title VII’s prohibition against sex discrimination after being terminated because of their sexual orientation.  In *R.G. & G.R. Harris Funeral Homes v. EEOC*, No. 18–107, a transgender woman asserted a Title VII sex discrimination claim when she was terminated after announcing that she would embrace her gender identity at work. Each of these cases were based on allegations that an employer fired a long-time employee for being homosexual or transgender.

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). Assessing the applicability of Title VII’s prohibition against sex-based discrimination in situations involving homosexuality and /or gender identity, the U.S. Supreme Court held, as follows:

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.

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…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.

Justice Gorsuch explained that “[i]tis impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” It is of no significance if another factor, such as the plaintiff’s attraction to the same sex or presentation as a different sex from the one assigned at birth, might also be at work, or even play a more important role in the employer’s decision.

Likewise, the Court explained that it makes no difference if the employer treated women as a group the same when compared to men as a group. In other words, employers cannot escape liability by demonstrating they males and females comparably as groups. A statutory violation occurs if an employer intentionally relies, even in part, on an individual employee’s sex when deciding to take an employment action against the employee. Discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, so when an employer intentionally penalizes an employee for being homosexual or transgender, the employer has violated Title VII.

In light of the Court’s decision, employers should be certain their written policies set forth prohibitions against workplace harassment and discrimination relating to an individual’s sexual orientation and gender identity. Employers should also review their workforce training programs in case revisions are needed to ensure managers and supervisors understand the scope of these prohibitions.

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