

Long Overdue: U.S. Supreme Court Holds Title VII Protects Gay and Transgender Employees

By **Julie Levinson Werner**

What You Need To Know:

- It is now unlawful under federal law to discriminate against an employee because of that person's sexual orientation or transgender status.
- Previously, more than 25 states did not have laws protecting gay employees from discrimination.
- Yesterday's Supreme Court decision confirms that discrimination based upon one's sexual orientation or gender identity is discrimination based upon sex and therefore unlawful.

On Monday, June 15, 2020, the United States Supreme Court ruled that Title VII of the Civil Rights Act of 1964 protects gay and transgender workers from workplace discrimination. Until yesterday's decision, this type of discrimination was still permitted in many parts of the United States.

Title VII prohibits discrimination based upon race, color, religion, sex, and national origin by employers with 15 or more employees. The issue that courts have struggled with for years is whether the prohibition on sex discrimination is the same as discrimination based upon one's sexual orientation or gender identity. Yesterday, the Supreme Court finally held that discrimination "because of sex" is akin to discrimination because of one's sexual orientation or gender identity. Justice Gorsuch, a Trump appointee who authored the majority opinion, wrote, "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." In other words, "[i]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

The Court's decision yesterday was actually a consolidation of three cases, each involving a situation where the employer allegedly fired

a longtime employee because he or she was homosexual or transgender. In one case, the employer fired the employee for conduct "unbecoming" a county employee after he began participating in a gay recreational softball league. In a second case, the employee was fired after he told a client he was gay. And in the third related case, the employee who presented as male when hired was fired after she informed her employer that she planned to live and work as female. Based upon each fact pattern, the Supreme Court held that an employer who fires an individual merely for being gay or transgender violates Title VII.

This decision will make a marked change in the law in about half of the states in the United States. In other states like New York, New Jersey, and California, state and local antidiscrimination laws have recognized sexual orientation as a protected class for years. Nonetheless, prohibiting this type of discrimination at the federal level is significant and long overdue.

Those employers who do not currently recognize sexual orientation and transgender status in their employee handbooks are encouraged to review and update these materials. In addition, businesses are encouraged to review their hiring, antiharassment training, and other employment practices to ensure compliance. Lowenstein Sandler LLP's employment lawyers are available to provide legal counsel if you have questions.

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