



STOKES WAGNER

ATTORNEYS AT LAW

ATLANTA • ITHACA • LOS ANGELES • PITTSBURGH • SAN DIEGO • SAN FRANCISCO

Are Sexual Orientation and Gender Identity Covered by Title VII? The Supreme Court Will Decide.

Recently, the United State Supreme Court accepted three different cases dealing with gay and transgender rights under Title VII of the Civil Rights Act of 1964. Title VII prohibits employment discrimination based on sex and the question of whether this includes discrimination on the basis of sexual orientation and gender identity has been hotly contested in recent years. While opinions issued by the U.S. Equal Employment Opportunity Commission [“EEOC”] have generally indicated that sexual orientation and gender identity should fall within the purview of Title VII, courts have remained divided over these issues. It is anticipated that the Supreme Court’s decisions will finally provide much-needed clarity for employers and the LGBTQ community at large.

Two of the cases before the Supreme Court [*Altitude Express v. Zarda*, Case No. 17-1623, and *Bostock v. Clayton County, Georgia*, Case No. 17-1618] ask whether Title VII’s prohibition against sex discrimination extends to discrimination based on an individual’s sexual orientation. In *Zarada*, the Second Circuit overturned long-standing precedent and found that Title VII prohibits discrimination on the basis of sexual orientation. In the *Bostock* decision, in contrast, the Eleventh Circuit found that an employee did not have a viable cause of action for sex discrimination after he was allegedly terminated due to his sexual orientation. In resolving the circuit split between the courts, the Supreme Court should answer whether employers are prohibited from discriminating against employees and applicants due to sexual orientation.

The Supreme Court will also review the Sixth Circuit Court’s decision in *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission et al.*, Case No. 18-107. In that case, the Sixth Circuit Court of Appeals found that an employer who refused to allow a trans woman to dress in women’s clothing violated Title VII. In its review, the Supreme Court will address the question of whether transgender employees can seek relief on the basis of gender identity discrimination under Title VII.

This trio of cases is expected to be decided during the Supreme Court’s 2019-2020 term. Employers will need to monitor these decisions closely to ensure their employment practices comply with the Supreme Court’s final decisions.

Questions? Contact Stokes Wagner.