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Supreme Court Extends Title VII Protections to LGBTQIA+ Workers

On June 15, 2020, the Supreme Court made its long-awaited decision in *Bostock v. Clayton County,* holding that Title VII protections expand to sexual orientation discrimination. In a landmark ruling, Justice Gorsuch, appointed by President Trump in 2017, delivered the majority opinion, in a move expanding beyond partisanship ideology. In a 6-3 opinion, the Court found that an employer who fires an individual merely for being gay or transgender violates Title VII under the definition of "sex." Although many states have already addressed this gap in the law in their own anti-discrimination laws, the ruling resolves a circuit split amongst the federal Courts of Appeals and closes a blind spot in federal law.

In his opinion, Justice Gorsuch examined the 1964 law's adoption and key statutory terms, notably "sex" and what Title VII says about. Looking at the ordinary public meaning of Title VII's language in 1964 at the time of adoption, the opinion notes that Title VII has a straightforward rule, namely, an employer violates Title VII when it intentionally fires an individual employee based in part on sex. As such, if changing the employee's sex would change the employer's decision, the employer has committed a statutory violation of Title VII.

Therefore, the majority found:

> An individual's homosexuality or transgender status is not relevant to employment decisions. That's because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.

The Court also found support based on its three leading precedents in *Phillips v. Martin Marietta Corp.* [400 U.S. 542 (1971)]; *Los Angeles Dept. of Water and Power v. Manhart* [435 U.S. 702 (1978)]; and *Oncale v. Sundowner Offshore Services, Inc.* [523 U.S. 75 (1998)]. First, it is irrelevant what an employer might call its discriminatory practice, or what else may motivate it. Second, the employee's sex does not need to be the sole or primary cause of the employer's adverse action. And lastly, an employer cannot escape liability by showing that it treats males and females comparably as groups because Title VII looks specifically at the action towards an individual rather than groups.

The historic ruling comes just days after the Trump administration announced its decision to roll back on transgender protections under the Affordable Care Act. The U.S. Department of Health and Human Services, on June 12, 2020, revised ACA provisions made by the Obama administration. The HHS stated it would not expand the definition of sex discrimination beyond "the plain meaning of the word sex as male or female and as determined by biology" to include gender identity. Unless a lawsuit is filed and a ruling is made, the regulation will go into effect 60 days after it is published in the Federal Register.

The revised ACA provisions will almost certainly be challenged, especially in light of the Supreme Court's holding today. The difference in opinions, however, between the Trump administration and the Supreme Court's ruling in *Bostock* demonstrates the battle over how the word "sex" can be interpreted that has long been debated in federal and state courts. As the Supreme Court has now clearly noted, discriminating against a person for being gay or transgender is inherently based on sex. Not only is this best practice, but it demonstrates the Supreme Court's institutional focus on what the law says and stands for, not merely what political parties dictate. Therefore, employers should immediately make sure that their practices and policies are in line with the new precedent.
