

“Simple but Momentous”

Discrimination based on sexual orientation or gender identity violates Title VII



“Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. 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.”

Bostock v. Clayton County, Georgia
590 U.S. ____ (2020).

Writing for the majority, Justice Gorsuch made this further historic pronouncement:

Title VII’s message is “simple but momentous”: An individual employee’s sex is “not relevant to the selection, evaluation, or compensation of employees.” [citing *Price Waterhouse v. Hopkins*]. The statute’s message for our cases is equally simple and momentous: 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.

https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

If the answer wasn’t clear before, it is clear now. Many State laws and City ordinances already expressly prohibit employment discrimination based on sexual orientation and/or gender identity/transgender status. And many employers likewise already prohibit such discrimination as a matter of policy, as a competitive advantage and to further inclusion efforts.

Now it’s the law of the land for employers with 15 or more employees. Consequently, we suggest employers review your anti-discrimination and anti-harassment policies, renew your employment law and anti-harassment trainings, and consider unconscious bias and other diversity and inclusion training and initiatives.