



SCOTUS Holds That Title VII Prohibits Discrimination Because of Sexual Orientation and/or Transgender Status

On June 15, 2020, the Supreme Court held that Title VII's prohibition of "sex" discrimination also prohibits discrimination because of sexual orientation and transgender status. See *Bostock v. Clayton County*, Case No. 17-1618 (Slip Opinion). Therefore, "an employer who fires an individual merely for being gay or transgender violates Title VII." *Id.* at pg. 1.

As this blog has previously discussed, there is a long running dispute over whether Title VII's prohibition of sex discrimination also prohibits discrimination on the basis of sexual orientation or transgender status:

- [The EEOC Weighs In On Sexual Orientation and Title VII \(July 20, 2015\)](#)
- [7th Circuit Holds That Title VII's Prohibition on Sex Discrimination Includes a Prohibition on Sexual Orientation Discrimination \(June 30, 2017\)](#)

Bostock is a consolidation of three cases (i.e. [Bostock v. Clayton County, Georgia](#); [Altitude Express v. Zarda](#); and [R.G. & G.R. Funeral Homes, Inc. v. EEOC](#)). In *Bostock*, the plaintiff was a child welfare advocate whose employment was allegedly terminated because he began participating in a gay recreational softball league. In *Zarda*, the plaintiff was a sky diving instructor whose employment was allegedly terminated shortly after disclosing to his employer that he was gay. In *R.G. & G.R. Funeral Homes*, the plaintiff was an individual whose employment was allegedly terminated shortly after disclosing their intention to transition to living and working full-time as a gender other than the one they were assigned at birth.

Although the facts of each case differ, they all ultimately raise the same legal issue: Does Title VII of the Civil Rights Act of 1964, which prohibits discrimination “because of . . . sex,” prohibit discrimination because of sexual orientation or transgender status?

The Supreme Court has now conclusively resolved the dispute. In a 6 – 3 opinion, the Supreme Court stated the following. See *Bostock Slip Opinion* at pg. 9:

“[Title VII’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 the individual based on sex. . . .”

However, it is worth noting that the Court’s opinion left to another day what implications the holding may have for religious employers and/or for individuals or institutions who may seek to enforce the protections of the Religious Freedom Restoration Act of 1993. See *Bostock Slip Opinion* at pg. 32:

“Separately, the employers fear that complying with Title VII’s requirement in cases like ours may require some employers to violate their religious convictions. We are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society. But worries about how Title VII may intersect with religious liberties are nothing new; they even predate the statute’s passage. . . . But how these doctrines protecting religious liberty interact with Title VII are questions for future cases too. . . . So while other employers in other cases may raise free exercise arguments that merit careful consideration, none of the employers before us today represent in this Court that compliance with Title VII will infringe their own religious liberties in any way.”

Key Takeaways

1. Title VII prohibits discrimination because of sexual orientation and/or transgender status.
2. It remains an open question how Title VII’s prohibition on sexual orientation and/or transgender status discrimination will interact with statutes or legal doctrines that protect the freedom to exercise certain religious beliefs.

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