

In Historic Decision, Supreme Court Rules LGBTQ Workers Are Protected From Discrimination

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Court rules “An employer who fires an individual merely for being gay or transgender defies the law.”

In a landmark decision on June 15, 2020, the U.S. Supreme Court ruled that federal workplace laws prohibit employers from basing employment decisions on a person’s sexual orientation or gender identities.

The decision in *Bostock v. Clayton County*, from an increasingly conservative Supreme Court, surprised many because the decision was not split along the traditionally ideological lines that the Court has demonstrated in the past. The case was decided in a 6-3 vote, with conservative Justice Neil Gorsuch writing the majority opinion, joined by Chief Justice John Roberts Jr., and the Court’s more liberal wing.

Title VII Interpretation Now Includes Sexual Orientation and Gender Identity

The historic ruling in *Bostock* addresses the interpretation of provisions of Title VII of the Civil Rights Act of 1964, and the opinion now extends protections to millions of workers nationwide. Title VII is a federal law that protects employees against discrimination based on certain specified characteristics, including race, color, national origin, sex, and religion.

Title VII states that an employer may not discriminate against workers based upon the above categories with regard to any term, condition, or privilege of employment. This includes such areas of employment as recruiting, hiring, promoting, transferring, training, disciplining, firing, or providing benefits to employees.

In Bostock, the Court held that the term “sex” under Title VII includes sexual orientation and gender identity, and therefore LGBTQ workers are entitled to the same federal protections.

The decision’s reasoning essentially looks at this scenario: An employer has two employees who are equal in every way, other than one is a man and the other is a woman. Both employees are attracted to and date men. The employer fires the man who dates men because he finds that orientation distasteful. The woman is not fired even though she too dates men. But for the fact that the fired employee’s sex is male, he would still have a job. This form of discrimination against someone because of sexual orientation or gender identity is akin to discrimination on the basis of a person’s sex.

The Bostock opinion states: “In Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee’s sex when deciding to fire that employee. We do not hesitate to recognize today a necessary consequence of that legislative choice. An employer who fires an individual merely for being gay or transgender defies the law.”

A Look at the Three Litigants: Gerald Bostock, Donald Zarda, and Aimee Stephens

The decision was the result of three separate actions that were consolidated into the Court’s opinion, involving three individuals who challenged the language of Title VII.

Gerald Bostock was a highly regarded child welfare services coordinator in Georgia, who was fired from his position after his supervisors learned he joined a gay softball team.

Donald Zarda was a skydiving instructor who would tell his female clients that he was gay to make them more comfortable when they were strapped to him for a jump out of a plane. His employer fired him because of his remark.

Aimee Stephens was a trans woman who was fired from her job with a funeral home after she informed her employer she was trans and that she intended to live and dress in a way that was consistent with her trans identity. She alleged that her employer offered her severance pay on the

condition that she did not speak about the firing.

Both Donald Zarda and Aimee Stephens died prior to their victory at the Supreme Court.

New Jersey's Law Against Discrimination Already Protects LGBTQ workers

Prior to this decision, there were many states in the country where LGBTQ workers were not protected against discrimination in employment. However, New Jersey was not one of them. New Jersey has long-standing and robust protections for LGBTQ residents and workers. The New Jersey Law Against Discrimination explicitly prohibits discrimination based on sexual orientation and gender identity, but many New Jersey residents commute to jobs in states that don't offer LGBTQ protections. The Bostock decision effects all states, providing rights for all LGBTQ workers.

What Comes Next? Discrimination Beyond the Workplace

There are clearly far reaching implications to the decision. Advocates have been pushing for many years for the passage of the Equality Act, which would modify federal non-discrimination laws to include protections for the categories of sexual orientation and gender identity, alongside race and sex. This is now seemingly accomplished, at least in the area of employment discrimination. However, many other laws look to the definitions of Title VII for their impact and range, including law pertaining to areas such as discrimination in housing, education, and healthcare. The U.S. Supreme Court's opinion in Bostock sends a strong message of support to the LGBTQ community and will likely be positioned as reasoning for protection in other areas where discrimination occurs.