

**U.S. SUPREME COURT RULES THAT TITLE VII  
PROTECTS INDIVIDUALS WHO ARE GAY OR TRANSGENDER**

**To:** ICRMT Members  
**From:** O'Halloran, Kosoff, Geitner & Cook, LLC, Jane May  
**Re:** Supreme Court Ruling: *Bostock v. Clayton County, Georgia*, No. 17-1618  
**Date:** June 16, 2020

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On June 15, 2020, the U.S. Supreme Court issued the long-awaited decision in [\*Bostock v. Clayton County, Georgia\*, No. 17-1618](#), holding that an employer who fires an individual for being homosexual or transgender violates the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964.<sup>1</sup> The following memo highlights some key points from the decision, but is not intended to be a full analysis of the opinion or its ramifications.

The *Bostock* case was a consolidated appeal of three appellate court decisions which addressed whether discrimination on the basis of sexual orientation and gender identity violated Title VII. In the first case, Mr. Bostock was a longstanding employee of Clay County, Georgia who was terminated by his employer after he began participating in a gay softball league. In the second case, Mr. Zarda, a skydiving instructor, was fired days after mentioning that he was gay. In the third case, Ms. Stephens, who presented as a male when she was hired by a funeral home, was terminated after advising her employer that she planned to live and work as a woman. In each case, the terminated employee alleged discrimination on the basis of their sex in violation of Title VII.

Justice Gorsuch wrote the majority opinion for the court which held that it is impossible to discriminate against someone for being homosexual or transgender without taking into account their sex. As a result, discrimination on the basis of sexual orientation or gender identity constitutes discrimination because of sex. The court explained that, “[i]f the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his

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<sup>1</sup> The Illinois Human Rights Act expressly prohibits discrimination in employment on the basis of sexual orientation and gender-identity. 775 ILCS 5/1-101 *et seq.*

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female colleague.” The court reasoned that homosexuality and transgender status are “inextricably bound up with sex.” In order to discriminate against someone on the basis of their sexual orientation or gender-identity, the employer must treat the individual differently because of their sex.

Key points that employers should take away in light of this decision include the following:

1. When an employer fires an employee for being homosexual or transgender, it necessarily intentionally discriminates against that individual because of sex.
2. The employee’s sex need not be the sole or primary cause of the employer’s adverse action to violate the law.
3. An employer cannot escape liability by demonstrating that it treats males and females equally as groups. In other words, if an employer takes adverse action against all gay or transgender employees, regardless of whether they are male or female, it would still violate Title VII.
4. Although the *Bostock* decision involved unlawful termination, other adverse actions that affect a term or condition of employment such as demotion, discipline, harassment, or denial of equal training opportunities would also constitute unlawful discrimination if made on the basis of sexual orientation or gender identity.

In light of this decision, employers should review their employment policies to ensure that they clearly prohibit discrimination and harassment on the basis of sexual orientation and gender identity. Appropriate procedures should be in place to investigate all complaints of unlawful discrimination and harassment, including, but not limited to, discrimination on the basis of an employee’s homosexual or transgender status. The employer’s policies should also prohibit retaliation against an employee for making a complaint of discrimination or harassment on the basis of sexual orientation or transgender status or for participating in an investigation into such complaints.

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