

# Three Things Employers Can Do Today in Light of Landmark SCOTUS LGBTQ+ Decision

June 15, 2020

Title VII of the Civil Rights Act prohibits employment discrimination based on race, color, religion, sex, and national origin. For more than 50 years, courts interpreted Title VII's prohibition on discrimination because of sex only to mean that women could not be treated worse than men, and vice versa, not that discrimination on the basis of sex included LGBTQ+ individuals. The question of whether the definition of "sex" included gender identity and sexual orientation came to light in three different cases, which resulted in a split amongst the circuits and made the issue ripe for review by the U.S. Supreme Court.

In the first case, Donald Zarda, a skydiving instructor, alleged that his Title VII rights were violated when he was fired because he was gay. Similarly, in the second case, Gerald Bostock, a child-welfare-services coordinator, alleged that he, too, was fired because he was gay. Finally, the Equal Employment Opportunity Commission filed the third lawsuit, involving the rights of transgender employees.

On June 15, 2020, the Supreme Court resolved the circuit split and decided that gay and transgender people are protected under Title VII of the Civil Rights Act of 1964. This ruling provides protections to many workers/employees who were previously not protected due to the prior definition of "sex." The 6-3 decision, coming from a fundamentally conservative court, was a surprise to many.

In the opinion, Justice Gorsuch wrote, "It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on 'sex.'" Given the history and controversy surrounding this issue, we can expect litigation to ensue as this decision opens the door to other challenges to discrimination on the basis of sexual orientation or transgender status.

## What can employers do now?

- Update harassment and discrimination policies to include protection against discrimination of LGBTQ+ employees
- Immediately institute training updates for supervisors regarding this new level of protection
- Educate all employees on the requirements of Title VII and on how to make a complaint of a Title VII violation

Please reach out to any member of McGlinchey's Labor and Employment team for help or questions.

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