



Supreme Court Rules: Sexual Orientation and Gender Identity Discrimination is Illegal Sex Discrimination under Title VII

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In June, the United States Supreme Court issued a landmark decision in *Bostock v. Clayton County* that expands the protections of Title VII of the Civil Rights Act of 1964 to include gay and transgender employees. Now, an employer who fires, refuses to hire, or takes any other adverse employment action against an individual merely for being gay or transgender violates Title VII.

School districts represent one of the largest blocks of employers in the State of Missouri. Many Missouri school districts have long implemented policies of non-discrimination that protect their employees, including those who are gay or transgender. Even still, understanding the facts and holdings of the Supreme Court's recent decision will help school districts avoid the transgressions of the employers in *Bostock*.

Bostock actually started out as three separate cases filed by three different individuals in various parts of the country. As Justice Neil Gorsuch noted in the majority opinion he penned for the Court, all three cases had the same facts: "an employer fired a long-time employee shortly after the employee revealed that he or she is homosexual or transgender—and allegedly for no reason other than the employee's homosexuality or transgender status."

In the first case, Gerald Bostock worked for a decade as a child welfare advocate for Clayton County, Georgia. Shortly after he started playing softball in a gay recreational league, Bostock was terminated for conduct "unbecoming" an employee of Clayton County.

In the second case, Donald Zarda was employed by Altitude Express in New York as a skydiving instructor. He had worked several seasons with the company, but he was fired just days after mentioning that he was gay.

The third case involved an employee, Aimee Stephens. When Ms. Stephens started working at R. G. & G. R. Harris Funeral Homes in Michigan, she presented as a male. Two years into her employment, Ms. Stephens was diagnosed with gender dysphoria and her doctors recommended that she begin living as a woman. During her sixth year with the company, Ms. Stephens wrote a letter to her employer describing her plan to "live and work full-time as a woman" when she returned

home from a planned vacation. The employer, however, fired Ms. Stephens before she left for vacation, telling her that “this is not going to work out.”

Bostock, Zarda, and Stephens separately sued their former employers under Title VII. And, each alleged that they had been unlawfully discriminated against on the basis of sex. Each case was appealed to the circuit court of appeals in the jurisdiction where it originated, but the circuit courts of appeals did not all rule the same way.

For Bostock, the Eleventh Circuit Court of Appeals held that Title VII does not prohibit employment decisions made because an employee is gay. Bostock appealed that decision to the Supreme Court. For Zarda and Stephens, however, the Second and Sixth Circuit Courts of Appeals held that sexual orientation and transgender discrimination violates Title VII. In those cases, the employers filed the appeals. The Supreme Court agreed to hear all three cases and consolidated them to decide whether Title VII covers gay and transgender employees.

Justice Gorsuch summarized the issue and the Court’s holding as follows:

[I]n Title VII, Congress outlawed discrimination in the workplace on the basis of race, color, religion, sex, or national origin. 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.

According to the Court, discrimination on the basis of sex has always been prohibited by Title VII’s plain terms. Because discrimination based on homosexuality or transgender status requires an employer to intentionally treat employees differently because of their sex, it violates Title VII. “An employer who discriminates on these grounds inescapably intends to rely on sex in its decisionmaking.”

The Supreme Court’s decision in *Bostock* marks a significant and clear change to the scope of employment discrimination under Title VII. Missouri school districts must now ensure the *Bostock* ruling is upheld in their policies, procedures, and practices, which can be completed by doing the following:

- Review non-discrimination policies and amend them if they do not include sexual orientation and gender identity as protected classes. Even if they already discuss protections provided to employees “on the basis of sex” or issues concerning “gender,” your district’s non-discrimination policy should be changed to avoid any ambiguity and to expressly say what is protected.

- Communicate to employees the changes that are made to policies of non-discrimination by revising the notice of non-discrimination posted on your school district's website and in employee handbooks. School administrators can also send correspondence to employees that specifically addresses the changes.
- Revise the school district's procedures for evaluating personnel decisions and investigating complaints of discrimination in order to be mindful of facts that could lead to a finding of discrimination with respect to gay or transgender employees. Districts can anticipate increased reports of discrimination relating to sexual orientation and gender identity, and these reports need to be handled with the same level of attention and sense of urgency that other reports of discrimination receive.
- Review the district's employee benefit plans to assess whether they discriminate against gay or transgender employees (i.e., by providing coverage to opposite-sex spouses, but not same-sex spouses or denying coverage to transgender employees).
- Provide training to district employees that: addresses sexual orientation and gender identity, is relevant to what employees experience at your district, and provides concrete examples of how various types of discrimination might happen.
- Provide training to your district's Title IX Coordinator specific to their responsibilities. School districts must ensure that their Title IX Coordinators have received training specific to not only what is covered under non-discrimination policies, but also how to implement procedures for receiving and investigating complaints of various types of discrimination.

Reviewing and amending policies, communicating to staff, and providing updated training to employees will help ensure Missouri school districts continue to provide work environments free of discrimination and to do so in a way that complies with the Supreme Court's decision in *Bostock*. As always, when issues of discrimination and harassment in employment arise, school administrators are encouraged to consult their district's legal counsel.