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SUPREME COURT PROHIBITS EMPLOYMENT DISCRIMINATION ON THE BASIS OF LGBTQ STATUS

by Gray Reed's Labor & Employment Department
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The Supreme Court is rarely clearer than it was today: **"An employer who fires an individual merely for being gay or transgender defies the law."**

In *Bostock v. Clayton County, Georgia*, the Court resolved a split among lower courts about whether Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of sexual orientation or transgender status. The Court held that employment decisions based on an employee's sexual orientation or transgender status are "because of sex" and therefore unlawful. The Court noted that "[s]ex plays a necessary and undisguisable role in the decision [to terminate an employee based on sexual orientation or transgender status], exactly what Title VII forbids." The decision brings federal courts in line with the position advanced by the Equal Employment Opportunity Commission for nearly a decade.

The Court's opinion looks at the language of Title VII, noting that "[o]nly the words on the page constitute the law adopted by Congress and approved by the President." The Court thus starts from the premise that the statute's language prohibiting discrimination "because of" sex mandates that an employer violates Title VII when it intentionally fires an employee based in part on sex. It then explains that, because "homosexuality and transgender status are inextricably bound up with sex," "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." With respect to sexual orientation, the rationale holds that if a male employee would not be terminated for sexual attraction to a woman, a female employee's termination for sexual attraction to a woman is, at least in part, based on the female employee's sex. Similarly, an employer who retains an employee who identified as female at birth and continues to do so but fires an employee who identified as male at birth but now identifies as female "intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth."

Although the Court's decision represents a final determination on the question of Title VII's application to discrimination based on sexual orientation or transgender status, the EEOC has advocated for this position since at least 2011, and many employers have long understood that this was the likely trajectory of the law. However, employers across the country must now recognize that Title VII's prohibitions apply fully to discrimination on the basis of homosexuality and gender identity. Employers should ensure that their equal employment opportunity policies and corresponding training explicitly address these protected classes.

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Gray Reed's labor & employment department counsels employers on all employment laws and regulations and help clients effectively manage their workforce through drafting and implementation of contracts, policies and handbooks. Importantly, Gray Reed's employment lawyers are skilled litigators and approach all issues from a trial perspective. For more information on Gray Reed's labor & employment department and its attorneys, click [here](#).