

June 15, 2020

U.S. Supreme Court Rules Title VII Protects LGBTQ Employees

Human Resources & Employment

Federal civil rights law protects gay and transgender employees from discrimination, the U.S. Supreme Court declared June 15, 2020, in *Bostock v. Clayton County, Georgia*. In a 6-3 decision, the court resolved the question of whether discrimination based on sexual orientation and/or gender identity is deemed to be discrimination based on sex, and therefore covered by Title VII, the portion of the Civil Rights Act of 1964 that prohibits discrimination in employment on the basis of sex, race, color, religion and national origin.

In a surprise to many Supreme Court watchers, conservative Justice Neil Gorsuch authored the opinion, joined by the court's four liberal justices and Chief Justice John Roberts. This was the first case on LGBTQ rights that the court had considered since the retirement of Justice Anthony Kennedy, who authored the majority opinions in *United States v. Windsor* (striking the Defense of Marriage Act's limited definition of marriage as heterosexual) and *Obergefell v. Hodges* (legalizing same-sex marriage).

In a lengthy opinion, Gorsuch wrote that "homosexuality and transgender status are inextricably bound up with sex[.]" and "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

The decision comes three years after the U.S. Court of Appeals for the Seventh Circuit in Chicago came to the same conclusion in *Hively v. Ivy Tech Community College*, becoming the first federal appeals court to rule that sexual orientation and gender discrimination are prohibited by Title VII's ban on sex discrimination.

Today's *Bostock* ruling puts into place nationwide the same employment protections that were already in place in Illinois under the state's Human Rights Act. Employers should remain committed to enforcing non-discrimination policies in all aspects of the workplace, training supervisors and employees on the variety of forms discrimination can take, and prohibiting retaliation when an employee is part of an investigation of the same.