

# Supreme Court Rules Title VII Protects Gay and Transgender Employees

By [Lauren Barghols Hanna](#)



Lauren Barghols  
Hanna

Earlier this morning, the United States Supreme Court issued a landmark ruling that an employer who fires or otherwise discriminates against an employee for being gay or transgender violates Title VII of the Civil Rights Act of 1964.

In *Bostock v. Clayton County, Georgia*, the Supreme Court heard three cases in which employers had fired long-term employees simply for being gay or transgender. A Georgia county employee was fired for “conduct unbecoming” an employee after he joined a gay recreational softball league. A funeral home terminated an employee who presented as a male when she was hired, after the employee advised her manager that she planned to “live and work full-time as a woman.” A skydiving company fired a skydiving instructor days after he advised a customer that he was gay.

In a 6-3 decision, the Supreme Court held that Title VII’s prohibition against discrimination “because of sex” prevents an employer from taking any adverse actions against employees

on the basis of gender, sexual identity, or sexual expression. Justice Gorsuch, author of the majority opinion, unequivocally declared that “[a]n 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.”

The *Bostock* opinion considers an employer with two employees, both of whom are attracted to men. The employees are materially identical in all respects, except that one is a man and the other is a woman. If the employer fires the male employee because he is attracted to men, the employer necessarily is discriminating against him for the traits or actions it tolerates in the female employee. Similarly, if an employer fires a transgender person because she was identified as male at birth but now identifies as a female, the employer is firing the individual for displaying traits or actions it would otherwise tolerate in an employee identified as female at birth. Employers cannot discipline employees for being “insufficiently feminine” or “insufficiently masculine” without violating Title VII.

Title VII of the Civil Rights Act outlawed discrimination in the workplace on the basis of race, color, religion, sex, or national origin. The Supreme Court noted that the legislators who adopted the Act in 1964 may not have anticipated this particular outcome, but that those same legislators may also not have anticipated that the Act would ultimately prohibit discrimination on the basis of motherhood, prohibit sexual harassment of female employees, and—eventually—prohibit sexual harassment of male employees to the same extent as female employees. But, as Justice Gorsuch noted, the phrase “because of...sex” is clear and unambiguous; thus, the “limits of the drafters’ imagination supply no reason to ignore the law’s demands.”

*Today, the Supreme Court clarified that “[a]n individual’s homosexuality or transgender status is not relevant to employment decisions” and that “[a]n employer who fires an individual merely for being gay or transgender defies the law.”*

See the United States Supreme Court opinion [HERE](#).

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