

In Landmark Decision, U.S. Supreme Court Expands LGBTQ Protections in Employment

On Monday, June 15, 2020, the U.S. Supreme Court issued a historic decision holding that LGBTQ individuals are protected from discrimination under Title VII of the Civil Rights Act of 1964 (Title VII). The ruling came down on a 6-3 split decision. Justice Gorsuch wrote the majority opinion backed by Chief Justice John Roberts and Justices Ginsburg, Breyer, Sotomayor, and Kagan. Justice Alito wrote a lengthy dissent in which Justice Thomas joined, and Justice Kavanaugh wrote a separate dissenting opinion.

The issue came before the Supreme Court from a consolidation of three different cases alleging discriminatory terminations based on sexual orientation and gender identity. These cases all turned on whether employment decisions based on homosexuality or transgender status fall within the definition of “because of ... sex” under Title VII. The various circuit courts deciding these cases had split on this question.

Justice Gorsuch’s analysis, which he self-describes as “textualism,” looked to the dictionary definition of the language in Title VII to determine “whether an employer can fire someone simply for being homosexual or transgender.” He concluded that, “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.” To illustrate his point, Justice Gorsuch explained that, if an employer terminates a female employee for being in a relationship with another woman, but would not terminate a male employee for being in a relationship with a woman, the employer has discriminated against the female employee on the basis of her gender. In other words, “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” Because the answer is clear in the text of the statute, there is no need to examine legislative history, which the dissent relied upon.

The Court also reminded that an employee’s gender identity or sexuality need only be *one* of several reasons for the adverse employment action in order for the employer to be held liable for discrimination. An employer may have several reasons for terminating an employee. However, if just one of those reasons is that the employee is transgender or homosexual, the employer can still be found liable because it acted “because of ... sex.”

The majority opinion is not lengthy, and its focus is narrow; not addressing the myriad questions attached to these issues, such as identification, religious accommodation, and privacy. Going forward, at least for the short term, employers will have to navigate these issues on their own and should be open to the employment-related questions that will arise.

You can find a copy of the opinion [here](#).



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