SCOTUS Has Ruled: LGBTQ Discrimination No Longer Allowed in the Workplace

By Kayla Platt Rady

Employers have long known that gender stereotyping is not allowed under Title VII of the Civil Rights Act's prohibition on discrimination because of sex. However, there has been some confusion over whether this prohibition also covers sexual orientation and gender identity discrimination, including claims that being gay, lesbian, or transgender constitutes nonconformity with a gender stereotype.

Circuit courts have been split on whether it is lawful for employers to discriminate against employees based on their sexual orientation (who they are attracted to) and gender identity (how they identify).

Today, June 15, 2020, the Supreme Court in a 6-3 ruling settled the issue — employers can no longer take adverse action against employees simply for being gay or transgendered.

Evolving Trends

Title VII of the Civil Rights Act, enacted in 1964, prohibits employment discrimination "because of sex." Courts initially rejected arguments that Title VII covered sexual orientation.

In 1989, the U.S. Supreme Court, in *Price Waterhouse v. Hopkins*, found that the sex discrimination provision of Title VII meant that gender stereotyping must be irrelevant to employment decisions.

For many years, there was no additional guidance from the U.S. Supreme Court on whether Title VII prohibited sexual orientation or gender identity discrimination, and there were inconsistent decisions from the courts on these issues.

Then, in 2015, the Equal Employment Opportunity Commission ("EEOC") issued a memo *Baldwin v. Foxx* declaring that Title VII does cover sexual orientation discrimination. Calling prior decisions "dated," the EEOC's opinion opened the door to further evolution of Title VII.

However, this new broader standard was met with mixed results, creating a circuit court split.

Today, the U.S. Supreme Court resolved the split and concluded "an employer who fires an individual merely for being gay or transgender violates Title VII."

Circuit Court Split

The U.S. Supreme Court considered a trio of cases – two claiming discrimination based on sexual orientation and a third claiming discrimination based on gender identity (transgender status.)

Second Circuit: Altitude Express v. Zarda (sexual orientation discrimination)

Donald Zarda, a gay skydiving instructor, brought a sex discrimination claim under Title VII, alleging that he was fired from his job at Altitude Express, Inc., because he failed to conform to "straight male macho stereotypes." The legal issue was whether the prohibition in Title VII against employment discrimination "because of sex" encompassed discrimination based on an individual's sexual orientation. The U.S. District Court in New York concluded the answer was "no," ruling in favor of the employer and finding that Zarda had failed to show that he had been discriminated against on the basis of sex. However, while Zarda's case was pending , the EEOC issued its non-binding memorandum in *Baldwin v. Foxx* that treated sexual orientation discrimination as covered by Title VII. Thus, Zarda appealed to the U.S. Court of Appeals for the Second Circuit. TheSecond Circuit disagreed with the District Court and held that sexual orientation discrimination constitutes a form of discrimination "because of sex" in violation of Title VII. The U.S. Supreme Court agreed with the Second Circuit and concluded that sexual orientation discrimination does violate Title VII.

Eleventh Circuit: Bostock v. Clayton County, Georgia (sexual orientation discrimination)

Gerald Bostock brought a sexual orientation and gender stereotyping claim under Title VII, alleging that he was fired from his job with the County because he was gay. The legal issue presented to the court was whether Title VII protects gay and lesbian individuals from discrimination if their sexual preferences do not conform to their employer's views of whom individuals of their respective genders should love. The Eleventh Circuit, clinging to a 39-year-old precedent, *Blum v. Gulf Oil Corp* (an Eleventh Circuit Court case decided ten years before the Supreme Court's decision in *Price Waterhouse v. Hopkins*) dismissed Bostock's claim, concluding that Title VII does not prohibit an employer from firing an employee for homosexuality. The U.S. Supreme Court rejected the Eleventh Circuit's opinion and held that the law *does* prohibit employers from firing employees for being gay.

Sixth Circuit: R.G. & G.R. Harris Funeral Homes v. EEOC (gender discrimination)

Aimee Stephens brought a sex discrimination claim under Title VII against her employer, R.G. & G.R. Harris Funeral Homes after she was fired for coming out as a transgender woman. The EEOC sued Stephens' employer on her behalf and the Sixth Circuit Court of Appeals ruled that Stephens' employer engaged in unlawful sex discrimination when it fired her for being transgender. The U.S. Supreme Court agreed with the Sixth Circuit and concluded that Title VII bars employers from firing employees because of their transgender status.

Significance for Employers of SCOTUS Ruling

In 2017, about 11.3 million Americans identified as lesbian, gay, or bisexual. Of those who so identified, roughly 20% reported experiencing workplace discrimination because their sexual preferences did not match their employer's expectations. Workplace discrimination based on sexual preferences is now unlawful. Today's ruling will have a significant impact on America's workplaces.

Today, the Supreme Court, in an opinion written by Justice Gorsuch, rejected a traditional interpretation of Title VII, took advantage of what the last half century has taught, and evolved with the times. Sexual orientation and gender identity have been added to the list of grounds of employment discrimination prohibited under Title VII. The high court reasoned that discrimination on the basis of homosexuality or transgender status necessarily requires an employer to intentionally treat the employee differently "because of" their sex — this is exactly what Title VII forbids. Thus, an employer who intentionally penalizes an employee for being a gay or transgendered person necessarily violates Title VII.

The bottom line: an employer can no longer fire an employee simply for being homosexual or transgender.

What Employers Can Do Now?

This case has far-reaching implications for employers throughout the nation, including Florida. As of today, June 15, 2020, there is no longer uncertainty as to whether employees can or cannot be liable under Title VII for firing employees for being gay or transgender—they can.

While cases interpreting the Florida Civil Rights Act generally follow the Title VII law, time will tell whether Florida judges apply Chapter 760 accordingly.

Today, the Supreme Court has laid down clear guidelines on what is considered to be discrimination based on sex and employers should revise employee handbooks, training and orientation materials, and overall approaches to workplace relations accordingly.