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SCOTUS Rules Discrimination Against LGBTQ Employees Is Discrimination On The Basis Of Sex

Legal Alert

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In a landmark decision in *Bostock v. Clayton County*, the Supreme Court of the United States ruled discrimination against LGBTQ employees violates Title VII of the Civil Rights Act of 1964. The 6-3 ruling is significant in that it did not rely on technical grounds, but rather on the legal analysis that disparate treatment of employees based on sexual orientation or gender identity is, by definition, discrimination based on sex. This decision upended what had been settled law until, at least, 2010, which generally held that Title VII's protections do not extend to discrimination based on sexual orientation or gender identity.

Starting in 2011, the U.S. Equal Employment Opportunity Commission (EEOC), which is responsible for enforcing Title VII, interpreted Title VII to prohibit discrimination against LGBTQ employees, however, many courts did not agree. Eventually, the U.S. Department of Justice under the current administration took the opposite position of the EEOC, creating conflicting interpretations within the executive branch. Indeed, as the Court noted in *Bostock*, U.S. Congress has repeatedly tried to amend Title VII to expressly prohibit discrimination based on sexual orientation and gender identity to resolve the conflict between these varying interpretations. There is no doubt that this decision is historic and will have the most immediate impact on employers in states where LGBTQ employees are not already protected by state laws or where state laws only provided weak protections. Title VII applies to both the private and public employers with 15 or more employees and to the federal government, employment agencies, and labor organizations.

Although the Supreme Court limited its decision to Title VII, since the decision is rooted in an analysis of the meaning of protections from discrimination "based on sex," we can expect it will form the basis for future courts to apply greater protections under other federal and state laws outside of Title VII that prohibit sex-based discrimination but were not previously interpreted to protect against discrimination based on sexual orientation or gender identity. The message to businesses is clear: Title VII does not condone discrimination based on sexual orientation or gender identity and that is also likely true of an array of other anti-discrimination laws.

For more information presented in this alert, please contact Adam Gersh, or any member of Flaster Greenberg's Labor & Employment Practice Group.

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