

# PUBLICATION

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## Historic Supreme Court Decision: 'An Employer Who Fires an Individual Merely for Being Gay or Transgender Defies the Law'

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**The rights of gay and transgender employees in America have been defined in a legal "gray area" for decades, with state laws protecting these employees in some states but not others and federal law split on whether Title VII of the Civil Rights Act included protections. On June 15, 2020, the United States Supreme Court ruled in a historic 6-3 decision that "[a]n employer who fires an individual merely for being gay or transgender defies the law."**

In October 2019, the Court heard oral arguments in the following cases:

1. *Zarda v. Altitude Express* – the Second Circuit Court of Appeals (New York, Connecticut, and Vermont) ruled in favor of a skydiving instructor who claimed he was terminated because he was gay;
2. *Bostock v. Clayton County* – the Eleventh Circuit Court of Appeals (Georgia, Florida, and Alabama) reaffirmed its precedent that sexual orientation is not a protected class under Title VII; and
3. *R.G. & G.R. Funeral Homes v. EEOC* – the Sixth Circuit Court of Appeals (Kentucky, Michigan, Ohio, and Tennessee) held that Title VII prohibits gender identity discrimination.

Title VII prohibits discrimination based on race, color, creed, national origin, religion, and sex. Although sexual orientation and gender identity are not explicitly mentioned in Title VII, proponents argue that such classes should be included because Title VII prohibits discrimination "because of sex." The Court agreed. Specifically, the Court held that "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. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

To reach its conclusion, the Court analyzed the ordinary meaning of the terms "sex" and "because of." Assuming that "sex" referred only to biological distinctions between male and female, the Court noted that "because of" meant "by reason of" or "on account of," which incorporated a but-for causation standard under Title VII. The Court noted that from the ordinary public meaning of the statute's language at the time of the law's adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex. It does not matter if other factors besides the individual's sex contributed to the decision.

The Court further noted that an individual employee's sex is not relevant to the selection, evaluation, or compensation of employees. Taking it a step further, the Court concluded that an individual's homosexuality or transgender status is not relevant to employment decisions. The Court recognized that it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. For example, when an employer fires an employee because she is homosexual or transgender, two causal factors may be in play – both the individual's sex and something else (the sex or gender to which the individual is attracted, or with which the individual identifies). Now the result is the same

regardless under Title VII. If an employer would not have fired an employee but for that individual's sex, the statute's causation standard is met, and liability may attach.

The Court also rejected the employers' argument that "no one" would have expected Title VII to apply to discrimination against homosexual and transgender persons when it was enacted. First, the Court noted that the terms of the statute are clear. Second, the Court noted that not long after law's passage, gay and transgender employees began filing Title VII complaints, so at least some people foresaw this potential application. Finally, the Court noted that Title VII's prohibition of sex discrimination in employment is a major piece of federal civil rights legislation. It has repeatedly produced unexpected applications. Congress's key drafting choices – to focus on discrimination against individuals and not merely between groups and to hold employers liable whenever sex is a cause of the plaintiff's injuries – virtually guaranteed that unexpected applications would emerge over time.

Employers not only need to ensure their policies include protections consistent with this decision, they now also need to take the same steps required to maintain a workplace free of discrimination and harassment based on an employee's LGBTQ status. If you have any questions on this issue, please contact the authors or any member of Baker Donelson's [Labor & Employment Practice Group](#) for assistance.