

## SPECIAL BULLETIN

June 16, 2020

### U.S. SUPREME COURT EXPANDS TITLE VII'S PROTECTION TO LGBTQ EMPLOYEES

In a landmark decision issued on Monday, June 15, the U.S. Supreme Court held in *Bostock v. Clayton County, Georgia*, that Title VII's protections extend to gay and transgender applicants and employees. The Court, in a 6-3 opinion authored by Justice Gorsuch, held that: "[a]n employer who fires an individual merely for being gay or transgender defies the law." The Court reasoned that it is impossible to discriminate against homosexual or transgender employees without discriminating because of their sex. Specifically, the Court stated that when an employee is fired because they are homosexual or transgender, two causal factors might be involved. The first factor is the employee's sex; the second is either (a) the sex to which the employee is attracted, or (b) the sex with which the employee identifies. According to the Court, these factors are a distinction without a difference under Title VII. The Court therefore determined that including homosexuality and gender identity within Title VII's protections was a "necessary consequence" of Title VII's prohibition of sex-based discrimination. Critically, the Court stated that, for Title VII to apply, the employee's sex need *not* be the sole or primary cause of the adverse action.

It is now clear that, in addition to race, color, religion, sex, national origin, and pregnancy, Title VII also protects employees from discrimination based on sexual orientation and gender identity. What is not clear, however, is how the opinion affects prior cases and statutes that protect employers' religious liberties. The Court expressly declined to resolve that issue, noting that it was a question for "future cases."

To the extent that they have not already done so, employers should ensure that their EEO, non-discrimination, and anti-harassment policies reflect that discrimination, harassment, and retaliation based on gender identity and sexual orientation are prohibited, that complaints regarding gender identity and/or sexual orientation discrimination will be investigated to the same extent as all other Title VII complaints, and that managers are trained in the prevention of and proper response to LGBTQ harassment and discrimination claims.