

This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

United States Supreme Court Rules That Title VII Prohibits Discrimination Based on Gender Identity and Sexual Orientation

Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits discrimination (including harassment) in the workplace based on sex, race, color, religion, or national origin, and applies to all employers with 15 or more employees. On Monday, June 15, 2020, the United States Supreme Court issued an historic decision in Bostock v. Clayton County, Georgia acknowledging that the prohibition of discrimination based on sex contained in Title VII ***includes*** the prohibition of discrimination based on sexual orientation and gender identity.

Lower Court Cases

In its decision, the Supreme Court addressed three cases that were appealed to it from lower courts. The three cases involved the termination from employment of gay and transgender individuals. One of these cases was the Bostock case, the named case in the Supreme Court decision, which was appealed from the Eleventh Circuit Court of Appeals, the Circuit Court with jurisdiction over Georgia.

Here is a summary of the facts in the three underlying cases:

- Clayton County, Georgia fired Gerald Bostock for conduct “unbecoming” a county employee shortly after he began participating in a gay recreational softball league. (Bostock)
- Altitude Express fired Donald Zarda days after he mentioned being gay. (Zarda)
- Aimee Stephens presented as a male when she was hired. After being employed for six years, she informed her employer, R. G. & G. R. Harris Funeral Homes, that she planned to “live and work full-time as a woman.” Her employment was terminated immediately. (Stephens)

While the decision from the Eleventh Circuit of Appeals in the Bostock case was that Title VII did not prohibit discrimination based on sexual orientation, the Second Circuit Court of Appeals in the Zarda case and the Sixth Circuit Court of Appeals in the Stephens case disagreed and held that sexual orientation and gender identity discrimination, respectively, were prohibited under Title VII. All three cases were appealed to the United States Supreme Court, and the Supreme Court decided to review all three cases so that it could address the conflict among the appellate courts.

U.S. Supreme Court

As the Supreme Court acknowledged, the “question before us is whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual ‘because of such individual’s sex’.” By a vote of 6 to 3, it decided that the answer is **yes**.

The Supreme Court reversed the Bostock case, agreeing with the Second and Sixth Circuit courts, to rule that an employer who takes an adverse employment action, such as termination of employment, against

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an individual merely for being gay or transgender violates Title VII. In its decision, the Court indicated that “[a]n 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.” It went on to say that “[a]n individual’s homosexuality or transgender status is not relevant to employment decisions. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

What Does This Decision Mean for Nonprofit Employers in Georgia?

The City of Atlanta and some other local jurisdictions already have statutes that prohibit discrimination on the basis of sexual orientation and gender identity,¹ so the law is not changing in those jurisdictions. However, the Supreme Court’s decision does reverse current law throughout the state of Georgia and the rest of the Eleventh Circuit. Under this decision, all employers in Georgia that are subject to Title VII are prohibited from making employment decisions, taking any adverse employment action, or allowing harassment of employees because of an individual’s sexual orientation or gender identity.

Employers including nonprofits, should review their current hiring practices and employment policies. Inquiries, if any, based on sexual orientation or gender identity should be removed from the hiring process. Employers should review their anti-discrimination and anti-harassment policies to ensure that they list sexual orientation and gender identity discrimination as well as harassment based on these protected categories as prohibited practices. Supervisors and employees should be instructed that discrimination or harassment on these bases will not be tolerated in the workplace.

If you have any questions about Title VII or about the prohibition of sexual orientation or gender identity discrimination in your workplace, please contact your PBPA attorney.

¹ City of Atlanta Ordinance No. 2000-79/Unlawful Employment Practices prohibits discrimination based on race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age or disability for all private employers with ten (10) or more employees.