

SNIFFEN & SPELLMAN, P.A.

SPECIAL LAW ALERT

June 17, 2020

SCOTUS finds that Title VII Prohibits Discrimination against Gay and Transgender Employees

In an opinion published earlier this week, the United States Supreme Court determined that discrimination against someone because of their sexual orientation or transgender status is sex discrimination in violation of Title VII. In the consolidated cases of *Bostock v. Clayton County*, *Altitude Express v. Zarda*, and *R.G. & G.R. Harris Funeral Homes v. EEOC*, Justice Neil Gorsuch explained, in the Court's 6-3 opinion, that the language of Title VII required this outcome because it is "impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

In the opinion, the Court held that what Congress might have intended or expected when enacting the Civil Rights Act in 1964 was simply not relevant. What matters, the Court explained, is 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." The Court reasoned that the phrase prohibiting discrimination "because of" sex in Title VII requires the Court apply the but-for causation standard to disparate treatment claims based on sex. This means that under the Civil Rights Act, it is unlawful for an employer to take a discriminatory action against an employee that would not have been taken "but for" the employee's sex. The Court reasoned that because sexual orientation and transgender status are connected to sex, in that let's suppose an employer has a policy of firing employees that are gay, the employer has taken an action "because of sex" because had the individual been the opposite sex, the employer would not have made the termination decision.

The Court narrowed the opinion by ruling only that an "employer who fires an individual merely for being gay or transgender defies the law." Whether sex-segregated bathrooms, locker rooms, or dress codes violate Title VII "are questions for future cases" according to the Court. The Court also noted that it did not purport to interpret the term "sex" under any other state or federal law.

Justice Alito penned a dissent joined by Justice Thomas. In his dissent, Justice Alito critiqued the majority opinion for encroaching on Congress's authority, stating there "is only one word for what the Court has done today: legislation." Justice Kavanaugh authored his own dissenting opinion. In his opinion, Justice Kavanaugh disagreed with the view of the majority as to what the ordinary meaning of the phrase "discriminate because of sex" means and how the language of the text of statutes should be given effect.

What's clear though is that Florida employers must take actions now to ensure that they are in compliance with applicable law. Indeed, the Florida Civil Rights Act, the state's employment

discrimination law equivalent to the Federal Civil Rights Act, does not explicitly prohibit discrimination based on sexual orientation or transgender status. The light of the Court's opinion, Florida employees have a cause of action under Title VII for sex discrimination when an adverse action is taken against them because they are gay or transgender. Employers should update employee handbooks, anti-harassment policies, and training to account for this new reality.

To read the opinion, click [here](#).