

Education Alert

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SUPREME COURT ISSUES LANDMARK DECISION ON TITLE VII

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On June 15, 2020, in Bostock v. Clayton County Georgia, the Supreme Court, in a six to three decision, held that pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), an employer may not fire an employee based on gender identity or sexuality because such action discriminates against that individual in part because of sex.

The Court explained that "[c]onsider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague." It gave another example that "[i]f the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee's sex plays an unmistakable and impermissible role in the discharge decision."

The Court further underscored that it did not need to consider legislative history when interpreting Title VII because the express language of the statute supported that discrimination based on sex encompasses actions taken based on gender identity and sexuality.

This decision reminds employers that, consistent with state law, it is impermissible to make employment decisions based on an employee's gender identity or sexual orientation. Furthermore, it may have implications for Title IX of the Education Amendments of 1972. The United States Department of Education's Office for Civil Rights ("OCR") in recent decisions had not consistently defined sex discrimination as including discrimination based on gender identity and sexual orientation. This decision has the potential to change that approach.

This Client Alert was prepared by Felicia Vasudevan and was reviewed by Mary Ellen Sowyrda and Kevin Bresnahan. If you have any questions about this issue, please contact Felicia Vasudevan or the attorney responsible for your account, or call (617) 479-5000.

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