

## Supreme Court Holds Title VII Protects LGBTQ+ Employees – What Employers Need to Do Now

June 17, 2020

On Monday, June 15, 2020, the United States Supreme Court issued a landmark employment law decision, holding that Title VII of the Civil Rights Act of 1964 prohibits covered employers from terminating or otherwise discriminating against an employee based on their sexual orientation or gender identity. In addition to highlighting the holding in this case, GableGotwals' Employment Team wants to ensure our clients understand implications for employers and identify next steps to ensure compliance with this decision.

### What's New?

Title VII bars discrimination based on “sex,” among other protected categories. While sexual orientation and gender identity are concepts distinct from sex, a 6–3 majority of the Supreme Court ruled that “sex discrimination” encompasses situations where employers discriminate against employees for being gay or transgender, because “[s]ex plays a necessary and undisguisable role in” such discrimination, “exactly what Title VII forbids.” In other words, Title VII is straightforward:

An employer violates Title VII when it intentionally fires an individual employee based in part on sex. It doesn't matter if other factors besides the plaintiff's sex contributed to the decision. And it doesn't matter if the employer treated women as a group the same when compared to men as a group. If the employer intentionally relies in part on an individual employee's sex when deciding to discharge the employee—put differently, if changing the employee's sex would have yielded a different choice by the employer—a statutory violation has occurred.

(As the Court colorfully analogized, “[i]ntentionally burning down a neighbor's house is arson, even if the perpetrator's ultimate intention (or motivation) is only to improve the view”). The “simple but momentous” message of Title VII, then, is clear: just as an individual employee's sex must be irrelevant to their employment, so too must that employee's sexual orientation and gender identity.

The Court's decision has the potential to impact Oklahoma employment law as well. If a business employs fewer than 15 employees, it falls outside Title VII's reach. However, the Oklahoma Anti-Discrimination Act (OADA) covers virtually all Oklahoma employers and, like Title VII, bars discrimination on the basis of sex. Given that courts have traditionally analyzed the OADA similarly to Title VII, Oklahoma's prohibition on sex discrimination may now also

encompass sexual orientation and gender identity discrimination, in light of the Supreme Court's decision.

### **What's Next?**

Employers are now on notice: discriminating against an employee—be it in hiring, performance evaluation or compensation—based on that employee's sexual orientation or gender identity is prohibited "sex discrimination" under Title VII. Fortunately, GableGotwals has been assisting employers in implementing protections for LGBTQ+ employees in the workplace before this decision, and is well positioned to help employers navigate these changes and educate their employees.

### **What We Recommend Employers Do Now**

- Review your current policies to ensure they reflect all protected categories. In Oklahoma, we recommend this model EEO statement:

*[COMPANY] is committed to equal employment opportunity. [COMPANY] strives to ensure equal employment opportunity in connection with all terms and conditions of employment. Accordingly, [COMPANY] will not tolerate any form of discrimination based on race, color, ancestry, national origin, citizenship, sex, gender, gender identity, sexual orientation, pregnancy, marital status, religion, age, disability, genetic information, medical marijuana license holder status, veteran status or any other characteristic protected by law, including association with a member of a protected class.*

- Communicate with your employees to explain any updated policies and expectations.
- Train employees and managers on your expectations to prevent discrimination in the workplace.
- Take all complaints of potential discrimination seriously and respond promptly.
- Show no tolerance for discriminating behavior.
- Take effective corrective action when responding to complaints of discrimination.
- Ensure leaders at the highest levels take an active, visible lead in promoting and encouraging discrimination prevention efforts.

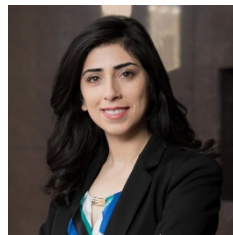
Our **Employment & Labor team** is committed to helping employers navigate changes in the legal landscape. Please contact any member of the team for further assistance.



**Paula M. Williams**  
405-568-3302  
[pwilliams@gablelaw.com](mailto:pwilliams@gablelaw.com)



**Gerard M. D'Emilio**  
405-568-3318  
[gdemilio@gablelaw.com](mailto:gdemilio@gablelaw.com)



**Stephanie Duran**  
918-595-4820  
[sduran@gablelaw.com](mailto:sduran@gablelaw.com)

[www.gablelaw.com](http://www.gablelaw.com)

*This article is provided for educational and informational purposes only and does not contain legal advice or create an attorney-client relationship. The information provided should not be taken as an indication of future legal results; any information provided should not be acted upon without consulting legal counsel.*