



Published: July 08, 2020

Supreme Court Rules in Favor of LGBTQ Protections in Title VII

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On June 15, 2020, the Supreme Court held in *Bostock v. Clayton County* that firing an employee because of the employee's sexual orientation or gender identity is a form of sex discrimination under Title VII of the Civil Rights Act. Title VII generally applies to employers in both the private and public sector that have 15 or more employees.

Briefly, Title VII, in part, prohibits employers from discrimination as to employment or benefits based on sex. Even before the Supreme Court's decision, the Equal Employment Opportunity Commission ("EEOC"), the agency responsible for enforcement of Title VII, has generally taken view that discrimination because of an employee's gender identity or orientation is discrimination based on sex.

While the Court's decision specifically dealt with terminating employees, it has implications for benefit plan provisions, as Title VII prohibits discrimination with respect to compensation, terms, conditions or privileges of employment due to an individual's race, color, religion, sex or national origin. This includes discrimination with respect to fringe benefits (i.e., medical, hospital, life insurance and retirement benefits).

Employers sponsoring health and welfare programs should assess whether their health programs may discriminate against employees who are gay or transgender. This may include exclusions for medically necessary medical services associated with health care for transgender participants (e.g., surgical benefits, hormone therapy, mental health care). Employers should consult with legal counsel and proceed with caution if implementing plan designs or eligibility rules based on sexual orientation or gender identity. In addition, state insurance and employment laws may also prohibit such discrimination.