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High Court Says Title VII Protects Gay, Trans Workers

Labor & Employment Update - High Court Says Title VII Protects Gay, Trans Workers

June 15, 2020

On June 15, 2020, the Supreme Court of the United States ruled, in a 6-3 decision, that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of an employee's sexual orientation or gender identity. Title VII makes it unlawful for an employer to fail or refuse to hire or discharge any individual or otherwise discriminate against any individual because of the individual's race, color, religion, sex, or national origin. In interpreting the statute, the Supreme Court of the United States determined the definition of "sex" includes sexual orientation and gender identity.

Justice Neil Gorsuch, in his majority opinion, stated:

[I]n Title VII, Congress outlawed discrimination in the workplace on the basis of race, color, religion, sex, or national origin. Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. 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 "[f]rom the ordinary public meaning of [Title VII's] language at the time of the law's adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex." Moreover, "[t]he statute's message for our cases is equally simple and momentous: An 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."

In response to Justice Samuel Alito and Justice Brett Kavanaugh dissenting opinions, which argued that neither sexual orientation nor transgender status is expressly listed as protected characteristics in Title VII, Justice Gorsuch noted that "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second. Nor is there any such thing as a 'canon of donut holes,' in which Congress's failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception."

Although some employers have EEO policies that already prohibit discrimination based on sexual orientation, employers should review their policies and update them,

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if needed, in light of today's decision.

The Court's full opinion can be found [here](#).

Chamberlain Hrdlicka's employment law group is ready to assist you with updating policies, providing EEO training, and answering your questions in light of this new Court ruling.

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