

## Supreme Court: Federal Law Prohibits Discrimination In Employment On Basis Of Sexual Orientation And Gender Identity

The U.S. Supreme Court ruled today that federal law prohibits discrimination in employment on the basis of sexual orientation and gender identity (Bostock v. Clayton County).

### Federal Law/Supreme Court's Decision

Title VII of the federal Civil Rights Act of 1964 is the basic federal law prohibiting employment discrimination. The statute prohibits discrimination in employment against any individual on the basis of various characteristics, including discrimination against an individual because of his or her "sex."

The question before the Supreme Court in the Bostock case was whether discrimination on the basis of sexual orientation or gender identity constitutes discrimination "because of sex" within the meaning of the law. By a 6-3 vote, the Court concluded that "the answer is clear."

The Court stated 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." Under those circumstances, the Court continued, "when an employer fires an employee for being homosexual or transgender, it necessarily and intentionally discriminates against that individual in part because of sex." Therefore, the Court concluded, "In Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee's sex when deciding to fire that employee. We do not hesitate to recognize today a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law."

### Impact For Arizona Employers

Title VII of the Civil Rights Act applies to employers with 15 or more persons on the payroll. Arizona employers with 15 or more workers, therefore, will need to be cognizant of this interpretation of the federal Civil Rights Act.

Arizona employers also must be cognizant of the impact that the Supreme Court's ruling will have on claims of workplace harassment on the basis of sexual orientation or gender identity.



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Just as the Bostock ruling now prohibits hiring, firing, and other adverse employment actions on the basis of sexual orientation or gender identity, harassment in the workplace on either of those bases also will now constitute unlawful discrimination in employment “because of sex.” Employers, therefore, will need to take steps to prohibit such harassment, and will be required to take timely and appropriate remedial action in response to internal complaints of such harassment.

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We encourage employers who have specific questions about the Supreme Court’s decision on discrimination in employment on the basis of sexual orientation (or any employment law topics) to contact **Don Johnsen** at (602) 530-8437 or **dpj@gknet.com**.