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EMPLOYER NEWSLETTER

SUPREME COURT RULES TITLE VII INCLUDES LGBTQ PROTECTIONS FROM WORKPLACE HARASSMENT

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On June 15, 2020, the United States Supreme Court ruled that unlawful discrimination in the workplace includes protection for individuals based on their sexual orientation or gender identity under Title VII of the Civil Rights Act of 1964. The landmark ruling in *Bostock v. Clayton County* concluded that discrimination against someone for being homosexual or transgender is considered discrimination based on their sex.

There were three different cases combined in this ruling: two cases with employees who alleged they were terminated due to their sexual orientation and one case where the employee alleged she was terminated for being transgender. One of the sexual orientation cases involved Gerald Bostock, a former child welfare services coordinator of Clayton County, Georgia, who claimed he was terminated because of his sexual orientation. Bostock played in a gay recreational softball league and his employer made unfavorable comments to Bostock after finding out about his participation in the league.

The second sexual orientation case involved Donald Zarda, a skydiving instructor who performed tandem dives with customers. When he performed tandem dives with females, he would inform them that he was gay to avoid possible concerns about being strapped to a man during the dive. One customer had complained to Zarda's employer that his disclosure was used in an attempt to excuse his behavior and alleged that Zarda had touched her inappropriately during a tandem dive. The company fired Zarda for violations of company policy and Zarda initiated the lawsuit alleging sexual discrimination.

The third case, a gender identity case, was filed by Aimee Stephens, a transgender woman who was born a male. She began her employment in 2007 as a man and in 2013 she informed the owner of the funeral home, where she worked, that she was going to have reassignment surgery and would be living and working as a woman. The funeral home terminated Stephens two weeks after the conversation.

The Supreme Court looked to the "but-for" test of discrimination and concluded that it is impossible to discriminate on the basis of sexual orientation or gender identity without discriminating because of sex. The Court did state that the decision is only meant to address the issue of discrimination under Title VII and does not include other common issues with sexual orientation or gender identity including bathroom or locker room issues or healthcare issues.

WHAT DOES THIS MEAN FOR EMPLOYERS

- Employers should review their policies and procedures to ensure that they include sexual orientation and gender identity as protected classes.
- Employers should review benefit packages to ensure that transgender employees, employees with same sex spouses or domestic partners have the same benefits as all other employees.
- Employers should provide training to employees, especially managers, supervisors and human resource employees to not to make any employment decisions such as hiring, firing, discipline or discharge based on someone's sexual orientation or gender identity.
- Employers should also review any policies regarding the use of restrooms or locker rooms and explain that transitioning employees are permitted to use a restroom based on their identified gender.

This is an evolving issue and it is important to follow state and federal guidelines as they are issued. Please let us know if we can help you review or update your company policies or procedures or if you would like our assistance with training employees. Mr. Clark's contact information is (480) 844-0039 or etc@clarkfirm.com.

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