

**U.S. Supreme Court Rules That Title VII Prohibits Discrimination  
Based on Sexual Orientation and Gender Identity**

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On Monday, June 15, 2020, the Supreme Court of the United States ruled that “an employer who fires an individual merely for being gay or transgender violates Title VII.” Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to fail or refuse to hire, discharge, or otherwise discriminate against any individual because of that individual’s race, color, religion, sex, or national origin. *Bostock v. Clayton County, Georgia* involved three cases in which an employer fired an employee after they revealed they were homosexual or transgender. The employees then sued their employers alleging sex discrimination in violation of Title VII.

The Court ruled that because “discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender violates Title VII.” The Court also stated that “the plaintiff’s sex need not be the sole or primary cause of the employer’s adverse action” for Title VII liability to attach. Further, the Court noted that an employer does not escape Title VII liability if it applies the same rule to male and female employees with respect to intentional discrimination based on homosexual or transgender status. Ultimately, the Court stated that the cases “involve[d] no more than the straightforward application of legal terms with plain and settled meaning” and held that to discriminate “on the basis of homosexuality or

transgender status requires an employer to intentionally treat individual employees different because of their sex” in violation of Title VII.

Title VII and the Nebraska Fair Employment Practices Act, which is patterned after Title VII, only apply to private employers who have 15 or more employees. However, many municipal laws apply to employers with fewer employees and afford similar protection to that in Title VII and NFEPA. For example, the Lincoln, Nebraska Municipal Code covers most employers with four or more employees. It prohibits employers from failing or refusing to hire, discharging, or otherwise discriminating against individuals because of their sex. Given that the language in Lincoln’s Code is substantially the same as that in Title VII and NFEPA, employers can anticipate that the Supreme Court’s analysis in *Bostock v. Clayton County, Georgia* will be persuasive in how it and similar code sections are interpreted.

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