

# HR Heads-up

PERIODIC UPDATES ON IMPORTANT HR LEGAL ISSUES

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## ***SCOTUS Holds Title VII Protects LGBTQ+ Employees in the Workplaces***

Recently, the U.S. Supreme Court issued a landmark decision on LGBTQ+ employment rights in *Bostock v. Clayton County*. Faced with deciding whether an employer can fire an employee merely because the employee is homosexual or transgender, the U.S. Supreme Court held that the longstanding federal ban on sex discrimination under Title VII of the Civil Rights Act of 1964 covers both sexual orientation and gender identity.

The Court reached its decision in *Bostock* by interpreting the plain meaning of Title VII's demand that it is "unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's . . . sex." Acknowledging that Congress adopted this broad language to make it illegal for an employer to rely on an employee's sex when deciding to fire that employee, the Court concluded that "[a]n employer who fires an individual merely for being gay or transgender defies the law."

The Court went on to solidify the "but-for" causation standard under Title VII by emphasizing that an employer violates federal law when it intentionally treats a person worse because of actions or attributes that it would otherwise tolerate in an individual of another sex. This means that an employer cannot avoid liability by demonstrating that other factors also played a role in the employer's decision or by demonstrating that it treats males and females comparably as groups. Under *Bostock*, when an employer fires an employee for being homosexual or transgender, it necessarily intentionally discriminates against that individual because of their sex in direct violation of Title VII.

While undoubtedly momentous, the *Bostock* decision may not create significant changes for Wisconsin employers. At the state level, the Wisconsin Fair Employment Act has prohibited employment discrimination on the basis of sexual orientation since 1981, and in 2017 the Seventh Circuit Court of Appeals agreed, holding in *Hively v. Ivy Tech Community College* that Title VII prohibits employment discrimination based on sexual orientation at the federal level. Because of this, many Wisconsin employers already have existing anti-discrimination policies that prohibit employment discrimination based on sexual orientation and gender identity. *Bostock* clarifies that government agencies and courts will likely interpret such policies to not only bar discrimination based on sex and sexual orientation, but

also based on gender identity.

Going forward, Wisconsin employers should take a hard look at pre-existing policies to ensure that LGBTQ+ applicants and employees are truly protected from biases in the workplace. Employers with questions about LGBTQ+ discrimination, including requests for policy reviews and training, should contact a member of the Boardman Clark Labor & Employment team.

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