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U.S. Supreme Court Issues Landmark Ruling in Favor of LGBTQ Employees in the Workplace

The following compliance update is provided to you by the Employment Law Group of Hill Ward Henderson:

Yesterday, in a much anticipated opinion, the United States Supreme Court held that **federal anti-discrimination laws protect LGBTQ employees in the workplace**. This ruling provides much needed clarity for employers and resolves a court split in which some federal courts recognized that federal law prohibited LGBTQ discrimination, while others (including those covering Florida, Georgia, and Alabama) stated that LGBTQ discrimination was not unlawful.

This landmark ruling, in *Bostock v. Clayton County, Georgia*, arises out of three different appeals. In two of the cases, the employees were fired despite having long and successful careers after their employers learned that they were homosexual. In the third case, an employee who initially presented herself as a male announced several years later that she planned to transition to "living and working full-time as a woman." The employer terminated her immediately.

The law at issue – Title VII of the Civil Rights Act of 1964 ("Title VII") – prohibits discrimination in employment on the basis of race, color, religion, sex and national origin. However, the law makes no mention of sexual orientation.

Nevertheless, in a 6-3 decision, the Supreme Court held that all three terminations were illegal. In doing so, the Court noted that "[a]n 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."

Although several states and municipalities have passed laws and rules prohibiting all or at least some forms of LGBTQ discrimination, this ruling clarifies that both sexual orientation discrimination and gender identity/transgender discrimination are prohibited by federal law throughout the United States.

The federal agency responsible for enforcing Title VII provides the following examples of LGBTQ-related conduct that it considers to be unlawful:

- Refusing to hire an applicant because she is a transgender woman.

- Firing an employee because he is planning or has made a gender transition.

- Denying an employee equal access to a common restroom corresponding to the employee's gender identity.

- Harassing a woman because she does not dress or talk in a feminine manner.

- Harassing a man because he dresses in an effeminate manner or enjoys hobbies that are traditionally associated with women.

- Harassing an employee because of a gender transition, such as by intentionally and persistently failing to use the name and gender pronoun that correspond to the gender identity with which the employee identifies, and which the employee has communicated to management and employees.

- Denying an employee a promotion because he is gay or straight.

- Paying a lower salary to an employee because of sexual orientation.

- Denying spousal health insurance benefits to a female employee because her legal spouse is a woman, while providing spousal health insurance to a male employee whose legal spouse is a woman.

- Harassing an employee because of his/her sexual orientation (e.g., derogatory terms, sexually oriented comments, or disparaging remarks for associating with a person of the same or opposite sex).

- Discriminating against or harassing an employee because of his/her sexual orientation or gender identity, in combination with another unlawful reason, for example, on the basis of transgender status and race, or sexual orientation and disability.

The penalties for non-compliance can be significant, including potential for significant emotional distress and other compensatory damages, punitive damages, and attorney's fees.

This ruling is particularly significant to employers in jurisdictions like Florida that did not recognize that LGBTQ discrimination was unlawful under federal law. **In light of this decision, employers should immediately take the following proactive steps to prevent and prohibit LGBTQ discrimination in the workplace:**

- Review your handbooks and anti-discrimination policies to ensure that sexual orientation and other LGBTQ-related status are included in your list of legally protected categories.

- Consider adopting policies and procedures protecting the rights of transgender employees. For example, a transgender woman must be allowed to use a common female restroom or locker room facility, and dress code policies should permit employees to follow the dress code matching their gender identity.

- Update your discrimination and harassment training modules to ensure that LGBTQ-related discrimination and harassment is addressed. Such training should include specific examples of what types of conduct could constitute unlawful discrimination. Managers and human resources personnel in particular need to be made aware that LGBTQ discrimination is unlawful and will not be tolerated.

In addition, employers will need to closely follow EEOC guidance and case law that follows this ruling. For example, as Justice Alito mentioned in his dissenting opinion, it is unclear what impact this ruling will have on employees who want their employers to pay for sex reassignment surgery and treatment.

If you have any questions about this landmark ruling and how it may impact

your business, please contact a member of

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