

## **Supreme Court Rules Employees are Protected from Discrimination on the Basis of Sexual Orientation and Gender Identity**

The [United States Supreme Court issued a landmark 6-3 decision](#) this past Monday holding that Title VII's protections against sex discrimination in the workplace apply to LGBTQ+ employees. This decision resolves a circuit split and confirms that under federal law, Title VII prohibits employers from discriminating against employees on the basis of sexual orientation and gender identity.

This ruling makes little difference for Illinois employees, who have been protected from discrimination on the basis of sexual orientation or gender identity since 2005 under the [Illinois Human Rights Act](#).

### **Analysis**

The decision was issued after considering three cases in which employers fired long-time employees for their sexual orientation or gender identity, [Bostock v. Clayton County](#), [Zarda v. Altitude Express](#), and [Stephens v. R.G. & G.R.](#) Employers in all three cases argued that firing gay or transgender individuals did not violate Title VII.

The Court majority disagreed. Justice Gorsuch, a textualist, acknowledged that Congress in 1964 likely did not have the LGBTQ+ community in mind when it banned discrimination based on sex, but that the logic of their protection by the statute was inescapable. The words of the statute and its focus on

"individuals, not groups" leads to only one conclusion, the prohibition on discrimination "because of sex" necessarily protects people who face bias because of their orientation or gender identity. "When the express terms of a statute give us one answer and extratextual considerations suggest another," Gorsuch wrote, "it's no contest. Only the written word is the law, and all persons are entitled to its benefit."

Justice Samuel Alito, who wrote more than 100 pages in dissent for himself and Justice Clarence Thomas, accused the majority of legislating under the pretense of textualism "to better reflect the current values of society" in an effort to update the statute, rather than enforce it. Justice Alito further argued that textualism does not necessitate reading a statute so literally that the intent of the drafters is ignored. Justice Kavanaugh, in a solo dissent, added that courts must give force to the "ordinary" meaning of the laws Congress passes, not the "literal" ones.

### **Employer Takeaways**

Monday's ruling is the most significant legal decision for the LGBTQ+ community since the [same-sex marriage battle in 2015](#). It is also a significant decision for human resource professionals and students of employment law. Nearly half of all states do not protect LGBTQ+ employees; in those states, LGBTQ+ workers have no legal protections against being fired, demoted, or paid less because of their orientation or gender identity. Now, federal law will protect all employees from adverse employment decisions made on the basis of those

traits. The decision further reinforces a trend that most employers and human resource professionals already know. The exceptions to at will employment are consuming the rule.

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