Supreme Court Confirms: Federal Law Prohibits Employers From Discriminating on Basis of Sexual Orientation

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Authored by: Matthew J. Donohue

On June 15, 2020, the Supreme Court of the United States determined that an employer that terminates an employee on the sole basis of the employee's sexual orientation violates Title VII of the Civil Rights Act of 1964. See Bostock v. Clayton County, 590 U.S. ___ (2020). The Supreme Court consolidated three (3) cases in which all of the employers admitted that an employee was terminated for being either homosexual or transgender. The crux of the decision came down to whether Title VII's usage of the term "sex" – which in 1964 only explicitly referred to the biological distinctions between male and female – includes individuals of the LGBTQ community.

Although Title VII does not explicitly reference "homosexuality" or "transgender" as protected characteristics, the Supreme Court concluded that Congress adopted broad language making it illegal for any employer to rely on an employee's sex when deciding to fire that employee: "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second." It is important to note that prior to the Bostock decision, New Jersey amended itslaws to prohibit employers from discriminating against an employee on the basis of "affectional or sexual orientation" pursuant to the New Jersey Law Against Discrimination. As a result of Bostock, no employer in any of the 50 states can terminate an employee on the sole basis of the employee's sexual orientation.