

## SCOTUS PROHIBITS EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY

June 2020

On June 15, 2020, the U.S. Supreme Court ruled that Title VII of the Civil Rights Act of 1964 ("Title VII"), the federal law that prohibits discrimination on the basis of sex, also protects employees from discrimination based on sexual orientation and gender identity. Title VII currently bars employment discrimination based on race, religion, national origin and sex. The Supreme Court's decision expands employment discrimination on the basis of "sex" to include millions of LGBTQ employees.

The opinion was authored by Associate Justice Neil M. Gorsuch, a frequent proponent of strict statutory interpretation. Justice Gorsuch stated that the plain text of Title VII prohibits penalizing members of the LGBTQ community ... "because to discriminate on these grounds requires an employer to intentionally treat individual employees differently because of their sex". The minority opinion disagreed, arguing primarily that discrimination based on sexual orientation and gender identity does not inherently entail discrimination on the basis of sex. The minority opined that the majority preempted the role of the legislature, by updating the text of Title VII to include sexual orientation and gender identity. The majority opinion, however, held that sex plays a "necessary and undisguisable role" in sexual orientation and gender identity employment discrimination.

Twenty-one states currently have statutes that protect against both sexual orientation and gender identity employment discrimination in public and private sectors. Yesterday's ruling provides federal protections that will overlap with any currently-existing state protections, and will further provide federal protections where statewide protections do not exist.

For insurers and insureds that may experience claims of sexual orientation and gender identity discrimination, this ruling may bring unanticipated litigation. Employers across the nation may become susceptible to discrimination claims that they would otherwise not have encountered.

A complainant that brings a claim under the new federal protections still bears the initial burden of establishing a prima facie case under the framework set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Specifically, a complainant must show:

- The complainant was in the protected class;
- The complainant was qualified for the position;
- The complainant suffered an adverse employment action; and
- The adverse action occurred under circumstances giving rise to an inference of discrimination.

The federal protections set forth in this matter do not rule on implications of freedom of religion protections at this time. Future case law on this matter may further alter the legal analysis of sexual orientation or gender identity discrimination claims when freedom of religion is at issue.

Litchfield Cavo attorneys are continuously monitoring the complexities of Title VII as further interpretations are released. Litchfield Cavo is ready to assist on this and all employment-discrimination legal matters. To discuss how this issue may impact your employment discrimination claims please contact Stacey Samuel and visit our website at [LitchfieldCavo.com](http://LitchfieldCavo.com)

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