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ALERT

Supreme Court Issues Historic Decision, Outlawing Workplace Discrimination on The Basis of Sexual Orientation and Transgender Status

By Bennett Pine, Dona Kahn and John P. Lacey, Jr.

Yesterday, in a historic decision, the United States Supreme Court ruled that existing federal law prohibits workplace discrimination on the basis of sexual orientation and transgender status.

Writing for the 6-3 majority, Justice Neil Gorsuch, an appointee of President Trump, held the Court's conclusion was clear – "an 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." Thus, sex plays a necessary and indistinguishable role in that decision, which is exactly, in the Court's view, what Title VII of the Civil Rights Act of 1964 forbids.

The Supreme Court's decision resolved a dispute among the circuit courts regarding this issue. Each of the three cases before the Court involved circumstances where an employer fired an employee shortly after the employee revealed that he or she is homosexual or transgender. Those employees each brought suit under Title VII of the Civil Rights Act of 1964, alleging unlawful discrimination on the basis of sex. In one case, the Eleventh Circuit held the law does not prohibit employers from firing employees for being gay, and thus, dismissed the suit as a matter of law. The Second Circuit, in contrast, concluded in a second case that sexual orientation discrimination does violate Title VII and allowed the case to proceed. In the third case, the Sixth Circuit agreed with the Second Circuit, holding that Title VII prohibits firing employees because of their transgender status.

The Court's decision rested on its interpretation of Title VII, finding that "from the ordinary public meaning of the statute's language at the time of the law's adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex," and "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

ANDERSON KILL
1251 Avenue of the Americas
New York, NY 10020
(212) 278-1000

ANDERSON KILL
1760 Market Street, Suite 600
Philadelphia, PA 19103
(267) 216-2700

ANDERSON KILL
1055 Washington Boulevard, Suite 510
Stamford, CT 06901
(203) 388-7950

ANDERSON KILL
1717 Pennsylvania Avenue, NW, Suite 200
Washington, DC 20006
(202) 416-6500

ANDERSON KILL
One Gateway Center, Suite 1510
Newark, NJ 07102
(973) 642-5858

ANDERSON KILL
Wells Fargo Building
355 South Grand Avenue, Suite 2450
Los Angeles, CA 90071
(213) 943-1444

www.andersonkill.com





who's who

Bennett Pine is a shareholder in Anderson Kill's New York and

Newark offices and is chair of the firm's employment & labor group. Mr. Pine has broad-based labor and employment law experience and regularly plays a hands-on role offering preventative maintenance advice and counseling to employers in the full range of legal issues affecting the workplace.

bpine@andersonkill.com

(212) 278-1288 (NY)

(973) 642-5006 (Newark)



Dona S. Kahn is of counsel in the New York office of Anderson Kill and is a member of the firm's Labor and Employment Group. An

experienced trial lawyer, she has tried more than 30 employment jury trials in courts nationwide, representing major companies and universities in cases primarily involving discrimination, harassment and retaliation claims. She also has extensive experience investigating complaints of discrimination against companies, universities and non-profits.

dkahn@andersonkill.com

(212) 278-1812

It should be noted that numerous congressional attempts have been made to add sexual orientation to Title VII. Those attempts, however, were all summarily defeated.

The Supreme Court's decision is momentous in that for the last fifty years, courts have generally interpreted Title VII's prohibition of discrimination on the basis of sex to mean only that women could not be treated worse than men, and vice versa. Today's decision marks an expansion of the Court's interpretation of the statute's meaning, and for many, is a welcome decision.

While the Supreme Court's decision will certainly have enormous political and philosophical impact, its practical result will be felt only in some states. Twenty-two states and the District of Columbia already have laws that prohibit discrimination on the basis of sexual orientation or transgender status. Seven additional states offer these protections to public employees. Nevertheless, the Supreme Court decision is now the clear federal law of the land for all employers and employees. ▲



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John P. Lacey Jr.

is an attorney practicing in Anderson Kill's New Jersey office. John focuses his practice on insurance recovery and corporate litigation.

**jlacey@andersonkill.com****(973) 642-5867**

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