

# Supreme Court Rules Discrimination Based on Sexual Orientation or Gender Identity Unlawful

On June 15, 2020, the Supreme Court of the United States ruled, 6-3, that it is unlawful under federal law for an employer to discriminate against an employee because of the individual's sexual orientation or gender identity. The Supreme Court's landmark ruling that federal anti-discrimination law protects LGBTQ workers resolved a question that had divided lower federal courts.

Under Title VII of the Civil Rights Act of 1964 (Title VII), it is "unlawful . . . for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's . . . sex . . ." In ruling on a trio of cases before it, the Supreme Court determined this section of Title VII applies when an employer discriminates against an employee on the basis of sexual orientation or gender identity. The Supreme Court reasoned that the inextricable link between an employee's sexual orientation or gender identity and the employee's sex makes it "impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

The Supreme Court's monumental decision comes three years after the Seventh Circuit's decision in *Hively v. Ivy Tech Community College*, in which the Seventh Circuit ruled that sexual orientation discrimination is a form of sex discrimination under Title VII. *Hively* did not, however, permit discrimination claims on the basis of an employee's gender identity. The Supreme Court's ruling affords broader protections to LGBTQ employees than *Hively* because it permits employees to bring a claim under Title VII for both sexual orientation and gender identity discrimination.

The Supreme Court's decision will have a broad impact on employers across the United States. Currently, fewer than half the states have laws that prohibit discrimination against employees based on sexual orientation or gender identity. Wisconsin is one of the states that prohibits discrimination against employees based on sexual orientation. However, Wisconsin's Fair Employment Act does not explicitly prohibit gender identity discrimination.

If you have questions about how the Supreme Court's decision impacts your business, or would like assistance updating your policies to comply with the decision, please contact Rob Sholl, Shannon Toole or your Reinhart attorney.

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