Supreme Court Rules Title VII Prohibits Discrimination Based on Sexual Orientation and Gender Identity

June 30, 2020

By Jordan May

In a 6-3 ruling issued on June 15, 2020 in *Bostock v. Clayton County, Georgia*, the United States Supreme Court held that workplace discrimination on the basis of sexual orientation and gender identity is sex-based discrimination prohibited under Title VII of the Civil Rights Act of 1964 (Title VII).

Title VII prohibits employers from discriminating against employees and potential employees because of that person's race, color, religion, sex, or national origin. But until recently, each U.S. Circuit Court of Appeals that had analyzed the issue held that Title VII did not prohibit sexual orientation or gender identity discrimination, including the Eighth and Tenth Circuits (which control Missouri and Kansas employers, respectively). As a result, in many jurisdictions, private employers could refuse to hire or promote, terminate, or otherwise discriminate against employees and potential employees based on their sexual orientation or gender identity. However, in 2017 and 2018, both the Seventh and Second Circuits extended Title VII's protections to include sexual orientation and/or gender identity. The resulting "circuit split" lead to the Supreme Court considering the question in *Bostock*.

In addition to Title VII, private employers are subject to state and local anti-discrimination laws. Prior to *Bostock*, 25 states and the District of Columbia had passed state laws explicitly prohibiting workplace discrimination based on sexual orientation and/or gender identity or interpreted their current laws prohibiting sex-based discrimination to include sexual orientation and/or gender identity discrimination. Kansas and Missouri had not previously prohibited workplace anti-discrimination based on sexual orientation or gender identity. Recently, however, several cities in Kansas and Missouri, and other states, had passed citywide laws prohibiting discrimination because of sexual orientation and gender

identity, including Kansas City, Kansas and Missouri; Overland Park, Kansas; Roeland Park, Kansas; and Columbia and St. Louis, Missouri.

With the Supreme Court's ruling in *Bostock*, the inconsistency in the application of Title VII across the country has been resolved. Any workplace discrimination based on a person's sexual orientation or gender identity is prohibited by Title VII and violations can subject employers to Equal Employment Opportunity Commission or state agency investigations, as well as lawsuits.

In light of the *Bostock* decision, all employers should review their anti-discrimination policies, practices, and training to ensure that sexual orientation and gender identity are included in their anti-discrimination protections. This decision may not change much for those employers in states and cities that had already adopted anti-discrimination laws prohibiting sexual orientation and gender identity discrimination or for employers who already have policies prohibiting such discrimination. But for other employers, including many in Kansas and Missouri, updates to anti-discrimination policies, procedures, and training will be required, along with other proactive steps to prevent and prohibit workplace discrimination of employees and potential employees based on sexual orientation and gender identity.

This article is general in nature and does not constitute legal advice. Readers with legal questions about how this decision may affect your business and your employees should consult the author Jordan May (jmay@sb-kc.com) or other attorneys in our Employment Section, including John Vering, Shannon Johnson, Brenda Hamilton, John Neyens, Mark Opara or your regular contact at Seigfreid Bingham at 816-421-4460.