

Employment Best Practices

EEOC Guidance:

Laws the Commission Enforces

- 42 U.S.C. § 2000e-2 (Section 703)

This is the section of the law that was at issue in *Bostock* and applies to the private sector, state and local governments, employment agencies, and labor organizations. *Bostock* made clear that section 703's prohibition of discrimination based on sex includes sexual orientation and transgender status.

- 42 U.S.C. § 2000e-16 (Section 717)

Section 717 covers employees of the federal government. The Commission has issued several federal sector decisions under section 717 finding discrimination based on the sexual orientation and transgender status of federal employees.

More available at [EEOC.gov](https://www.eeoc.gov)

Title VII

Sexual Orientation & Gender Identity



What Would You Do?

Q. How would you respond?

An employee you hired last year, Wyatt, begins presenting as female, wearing dresses to work and asking that you and her coworkers refer to her as “Wyndi.” Wyndi requests to have her signature line changed. Although there is no issue with dress code or other policies, several of your staff complain to you about their discomfort with Wyndi’s transgender status. How would you handle Wyndi’s requests and those of her coworkers?

Q. What would you do?

Your supervisor tells you to keep a close eye on Wyndi and to let her know if Wyndi does anything that would justify termination. Even though Wyndi has excellent performance, it is clear that your supervisor is looking for a reason to discharge her, regardless.

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In *Bostock v. Clayton County, Georgia*, the Supreme Court held that Title VII protections based on sex extend to sexual orientation and gender identity. The Court did not rely on arguments related to sex stereotyping or discrimination by association, but instead emphasized the plain text of the Civil Rights Act's Title VII language about sex. The Court reasoned that discrimination based on sexual orientation or gender identity automatically involves discrimination based on sex, because they are inextricably connected. In other words, there cannot be discrimination on the basis of sexual orientation or gender identity without discrimination based on sex. The Supreme Court used analogies of same-sex marriage and transgender status to illustrate how, *but for one's sex*, differing treatment on the basis of sexual orientation or gender identity would not otherwise occur. In its decision, the Court did not weigh other statutes or Constitutional Amendments related to religious freedoms.

Bostock v. Clayton County, Georgia, No. 17-1618 (S. Ct. June 15, 2020).

The Bottom Line:

Discrimination against someone because of their sexual orientation or gender identity is illegal under Title VII of the Civil Rights Act of 1964, as amended. Sexual orientation, gender identity, and sex are all connected, and Title VII expressly prohibits discrimination based on sex. Though the Court did not weigh religious freedom issues, it clearly linked sex with sexual orientation and gender identity, moving away from earlier arguments related to association or sex-based stereotypes.