



July 8, 2019

### **Brief: Workplace Discrimination Based on LGBTQ Status is Unlawful**

The AAUP has joined an [amicus brief](#) arguing that workplace discrimination based on LGBTQ status is discrimination “because of . . . sex” and therefore is prohibited by Title VII of the Civil Rights Act. The brief, filed in the Supreme Court of the United States, was prepared primarily by the Lawyers’ Committee for Civil Rights Under Law and the Leadership Conference on Civil and Human Rights, and was joined by other civil rights organizations. The brief involves three separate cases arising from the termination of employees based on their LGBTQ status, which were consolidated by the court. A decision from the court is expected by June 2020.

Each of the three cases involved individuals who were fired from their workplaces after the employer learned of their LGBTQ status. Three separate lawsuits were filed alleging that the terminations violated Title VII’s prohibition against discrimination based on sex. Courts issued conflicting decisions in these cases. In the lead case, Gerald Bostock, a county employee in Clayton County, Georgia, was fired after his employer learned that he is gay. He sued the county under Title VII for employment discrimination, but a court held that Title VII does not prohibit firing because of sexual orientation. In the second case, Donald Zarda was fired from his work as an instructor with a skydiving company in New York, and a court found that Title VII does prohibit discrimination based on sexual orientation. In the third case, Aimee Stephens, a transgender woman, was fired after informing her employer that she would transition to live as a woman. She brought her claim to the Equal Employment Opportunity Commission (EEOC), which investigated and then brought suit against her employer. In that case, a court held that Title VII protects against discrimination because of transgender status. Because the decisions addressed the same issue, the Supreme Court consolidated the cases. The court will now have the opportunity to determine whether Title VII applies to sexual orientation and transgender status.

The amicus brief that the AAUP has joined argues that Title VII applies to workplace discrimination based on LGBTQ status since it is discrimination because of an individual’s sex. The brief outlines how the Title VII has resulted in progress toward eradicating workplace discrimination and how it bars disparate treatment because of sexuality. It also explains that a decision to exclude LGBTQ status from Title VII’s protections would leave LGBTQ people of color unprotected from pretextual racial discrimination because of the intersectionality of identities. As the amicus brief argues, carving out an exception in Title VII’s protections for LGBTQ individuals would be contrary to its text and other precedents. It would also would leave those most vulnerable to workplace discrimination without protection, rendering Title VII unable to fulfill its purpose of eradicating discrimination in the workplace.

The consolidated cases are *Bostock v. Clayton County, Georgia, et al.*; *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC, et al.*; and *Altitude Express, Inc., et al. v. Zarda*.