

Bostock v. Clayton County, Georgia, Altitude Express, Inc. v. Zarda (2019) **(consolidated)**

Background

The 14th Amendment guarantees that “No State shall...deny to any person within its jurisdiction the equal protection of the laws.” To help secure this constitutional protection, Congress passed the **Civil Rights Act of 1964**. This landmark piece of legislation prohibits discrimination based on race, color, religion, sex, or national origin in places of public accommodation, schools, and employment. One key provision of the Civil Rights Act is **Title VII**, which makes it unlawful for employers to make employment decisions based on a person’s race, color, religion, sex, or national origin. Since 1964, Congress has amended Title VII and passed additional laws making it unlawful for employers to discriminate based on other factors, such as pregnancy, age, and disability. While a bill called the Equality Act passed in the U.S. House of Representatives on May 17, 2019, it has not been taken up by the Senate yet, so there is no federal law that explicitly provides protections for LGBTQ workers against discrimination. Some federal courts have concluded that the protections against “sex” discrimination already contained in Title VII also restricts employers from discriminating based on sexual orientation or gender identity. Other federal courts have reached the opposite conclusion.

One way that an employer can unlawfully discriminate against an employee is if there is evidence of **disparate treatment**. Disparate treatment occurs when a member of a group that is protected under Title VII, called a **protected class**, is treated differently (“less well”) than **similarly situated** peers. Two individuals are similarly situated if they share the same relevant characteristics—such as education, job performance, and other qualifications—except for one individual’s membership in a protected class. For example, if two employees with the same qualifications—one man and one woman—were being considered for a promotion and the man was chosen over the woman because the company did not want to promote a woman, that would be evidence of disparate treatment. To prove a claim of sex discrimination, an employee can point to **sex stereotyping**, which occurs when an employee is punished for acting in a way that differs from how their employer expects them to behave based on their sex, such as firing a woman for not wearing makeup.

These cases concern alleged workplace discrimination against two gay men because of their **sexual orientation**, which refers to the gender to whom a person is usually attracted.