YourRights@Work

advancing workplace rights, safety & health, and accessibility in the legislative branch

Are LGBQT+ employees protected by the Congressional Accountability Reform Act (CAA)?

The CAA prohibits workplace discrimination based on "race, color, religion, sex, or national origin."

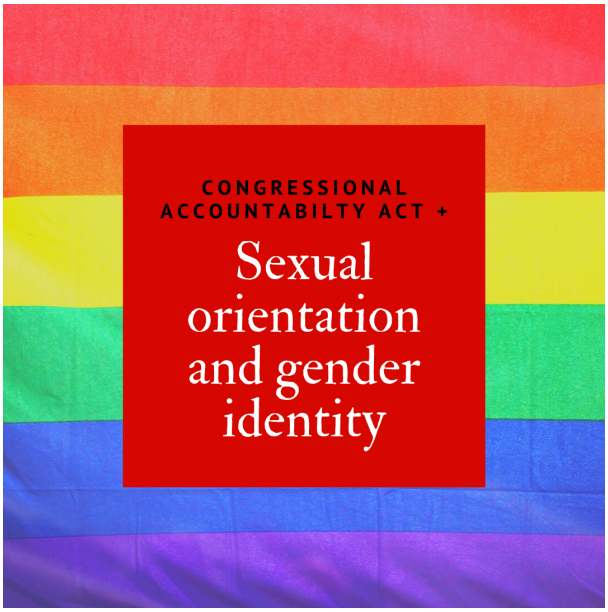
Title VII of the Civil Rights Act of 1964, as applied by the CAA, does not expressly protect employees from discrimination based on their sexual orientation or gender identity. But the meaning of the term "discrimination based on sex" in Title VII has been widely argued in courts and is the crux of the debate on whether LGBTQ+ employees are covered by Title VII.

The Supreme Court has recently agreed to hear arguments consolidated from three cases to determine whether Title VII of the Civil Rights Act extends protections from workplace discrimination based on sexual orientation or gender identity.

Two cases, *Altitude Express, Inc. v. Zarda* and *Bostock v. Clayton County, Georgia*, concern whether gay, lesbian, and/or bisexual workers have protections in the workplace. The final case, *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC*, considers protections regarding gender identity.

The issue comes to the Supreme Court after a recent split in decisions among the Federal Circuit Courts and as new laws changing sex discrimination protections, such as the Marriage Equality Act, take effect. A decision is expected by the Court in late spring of 2020.

While not explicitly included in the list of protected bases, several federal courts have interpreted Title VII's sex discrimination provision as prohibiting discrimination against employees on the basis of sexual orientation and gender identity. Moreover, courts around the country have held that employment actions motivated by gender stereotyping amount to unlawful sex discrimination.



>>> DETAILED INFORMATION

The Office of the General Counsel held a Brown Bag Lunch discussion about cases before the Supreme Court of the United States (SCOTUS) that could change or clarify the rights and obligations of covered employees and employing offices under the CAA.

Read the full outline.

Some offices have specific internal policies that prohibit discrimination on the grounds of sexual orientation and gender identity or expression.

In the House, mandatory anti-harassment and anti-discrimination policies are required. As part of that resolution, the House Administration Committee created a model policy that - although not required - employers may use. It includes language that "all employees, interns, detailees, and fellows work in an environment free from discrimination, harassment, or intimidation on the basis of race, color, religion, sex, pregnancy, gender stereotyping, gender identity, sexual orientation, national origin, age (40 or over), disability, military status, genetic information prohibited by the Congressional Accountability Act or House Rules."

Legislative branch employees who believe their rights may have been violated based on their sexual orientation or gender identity may contact the OCWR to speak with a Confidential Advisor about their rights under the CAA.

How can you support LGBTQ+ employees in the workplace?

Listen. Don't worry about saying the right thing, sometimes the act of listening is most important.

Be mindful of possible unconscious bias. Taking extra care when using pronouns and avoiding gender stereotypes helps to ensure everyone feels welcome in the workplace.

Consider taking action if you witness or become aware of harassment or discrimination. Follow any office policies or procedures for reporting potential workplace rights violations. Alternatively, even if there are no policies or procedures in place, you may talk to a supervisor or contact the OCWR to speak to a Confidential Advisor.

If you're a manager, consider:

- Ensuring office diversity in hiring by removing any references to an applicant's gender, sexual orientation, and gender identity in job announcements.
- Offering gender neutral accommodations and facilities in the workplace.
- Talking with and training all staff about harassment prevention and offering the opportunity for open communication about any concerns of bullying in the workplace.

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