

Beyond Bostock: Legal Gaps Affecting LGBTQIA+ Workers

June 17, 2026

By Marissa "Missy" Torgerson



In its landmark decision in *Bostock v. Clayton County*, the Supreme Court held that discrimination based on sexual orientation is illegal under Title VII. This sweeping ruling changed the legal landscape for homosexual and transgender employees, ensuring that key anti-discrimination laws also protect them in the workplace. In it, the Court makes clear, “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

While *Bostock* marked a major victory for LGBTQIA+ workers, its reasoning leaves important gaps — particularly for bisexual, asexual, and nonbinary individuals, as well as in areas like healthcare coverage.

Bisexuality

The Supreme Court could not have been clearer in *Bostock* that Title VII “works to protect individuals of both sexes from discrimination and does so equally” (emphasis added). As stated above, this clarity extends to homosexual and transgender individuals. Where the waters become murky is in instances where individuals do not fit neatly into the gender binary, or when their sexuality is neither heterosexual nor homosexual.

The Sixth Circuit recently posited in *Hamm v. Pullman SST, Inc.*, “Does *Bostock*’s but-for logic also prohibit employers from discriminating against those who are bisexual?” It then declined to answer that question or address whether bisexual, asexual, or otherwise queer orientations would be covered equally.

Taken to its logical limits, *Bostock*’s but-for framework raises difficult questions about how bisexual or asexual individuals fit within Title VII protections. The *Bostock* Court explained that “if changing the employee’s sex would have yielded a different choice by the employer, a statutory violation has occurred.” In the case of bisexual, asexual, or other orientations, however, changing the employee’s sex may not necessarily change the outcome.

The example provided by the Supreme Court is illustrative:

The two individuals are, to the employer’s mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee’s sex, and the affected employee’s sex is a but-for cause of his discharge.

Applying this standard to a bisexual employee, one might imagine a male employee terminated for being attracted to both men and women. If the employer were to terminate a female employee for being attracted to both men and women, the termination would not necessarily be discriminatory under a strict but-for analysis. The same logic could apply to employees who are attracted to neither men nor women.

Nonbinary Individuals

Courts have not yet squarely addressed whether *Bostock* extends Title VII protections to nonbinary individuals — those who identify outside of the male/female gender binary. This presents a closer question. On the one hand, the Court's reasoning in *Bostock* relies heavily on a binary conception of sex. On the other, nonbinary status is arguably “inextricably bound up with sex,” as an employer who discriminates against a nonbinary individual necessarily treats that employee differently because of sex-based considerations.

Gender-Affirming Care

Bostock also raises practical questions for employers, particularly with respect to benefits. For example, must employers provide gender-affirming care on equal terms across genders?

The Eleventh Circuit addressed part of this issue in September 2025 in *Lange v. Houston County, Georgia*, holding that employers may categorically deny coverage for gender-affirming surgeries so long as the policy applies “regardless of [the employees'] biological sex.” In reaching this conclusion, the court relied heavily on *United States v. Skrametti*, reasoning that classifications based on medical use do not implicate Title VII because “a key aspect of any medical treatment is the underlying medical concern the treatment is intended to address.” This focus on medical reasoning eliminates the gender question, thus allowing employers a broader ability to determine what conditions to cover.

Conclusion

Bostock was a transformative decision, but it is not the final word. As courts continue to grapple with bisexuality, nonbinary identity, and healthcare benefits, its promise remains uneven in application. For employers, the safest course is to interpret Title VII broadly when reviewing workplace discrimination and benefits policies, while remaining mindful of evolving protections for employees across the LGBTQIA+ spectrum.