



## AAOS Now

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Diversity

Practice Management

# Supreme Court Rules on LGBTQ Job Discrimination

On June 15, the U.S. Supreme Court ruled that federal law protects workers from discrimination based on their sexual orientation or gender identity. The decision, which surprised court watchers due to the court's conservative-leaning majority, marks the first major case on transgender rights and adds new protections for LGBTQ (lesbian, gay, bisexual, transgender, or queer [or questioning]) workers.

The majority opinion in the 6-3 decision was written by Justice Neil Gorsuch, a conservative justice who was appointed by President Donald J. Trump. Justice Gorsuch and Chief Justice John Roberts joined the four liberal members of the court in arguing that the Civil Rights Act of 1964, which prohibits discrimination based on gender, also applies to LGBTQ individuals.

“In [the Civil Rights Act of 1964], Congress adopted broad language making it illegal for an employer to rely on an employee's sex when deciding to fire that employee,” Justice Gorsuch wrote, calling the decision “a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law.”

A dissenting opinion written by Justice Samuel Alito and joined by Justice Clarence Thomas called the majority's reasoning “preposterous,” saying, “A more brazen abuse of our authority to interpret statutes is hard to recall.”

## Longtime efforts to protect LGBTQ workers

Before the ruling, more than half of states did not have laws explicitly protecting LGBTQ workers from discrimination. Supporters of LGBTQ rights had been working to combat

workplace discrimination for decades, with many considering the issue even more important than their landmark victory on same-sex marriage in 2015.

The ruling comes as the Department of Health and Human Services (HHS) finalized a regulation on June 12 that repeals a 2016 rule that required healthcare providers and insurers to provide and cover medically appropriate treatment for transgender patients. According to HHS, the rule returns “to the government’s interpretation of sex discrimination according to the plain meaning of the word ‘sex’ as male or female and as determined by biology.” In the wake of the court’s ruling on workplace rights, lawsuits have been filed against the regulation.

### **Orthopaedic perspective**

AAOS members are leading the way to recognize LGBTQ orthopaedic surgeons and patients as a critical part of our community. Julie Balch Samora, MD, PhD, MPH, FAAOS, was the first to initiate discussions within *AAOS Now* regarding LGBTQ issues within orthopaedics. “This ruling affords safeguards to trainees and colleagues in orthopaedics, as well as to patients, which is critically important,” she said. “This community has been marginalized, with studies demonstrating that there are clear healthcare disparities based on sexual orientation and gender identity. I am hopeful that this ruling will support open, healthy, and inclusive working and educational environments and that our LGBTQ providers can help to inform, research, advocate, and educate around LGBTQ healthcare issues, with the goal of better serving this minority patient population and improving overall healthcare outcomes.”

Emily Benson, MD, FAAOS, also believes that the Supreme Court decision represents important progress. “With this ruling, our country has taken a large step forward in protecting the careers of a vulnerable and important subset of our orthopaedic surgery community,” she said. “The fear of being fired for a reason that has nothing to do with your ability to do your job has been a heavy weight for many to carry, particularly for those trailblazers of earlier generations. This decision goes a long way to ease that burden and allow LGBTQ orthopaedic trainees and surgeons the same privilege to focus on orthopaedics that their peers are afforded. Orthopaedics is slowly starting to recognize that increasing our diversity only further strengthens our field, and this ruling provides great momentum for that movement.”

### **AAOS’ commitment to inclusiveness and health equity**

AAOS has focused on fostering diversity in orthopaedics as one of its strategic goals. It seeks to better understand and respond to the patient population, enhance the delivery of

culturally competent care, and support efforts to diversify the profession and orthopaedic workforce.

Within healthcare policy, AAOS has actively advocated for and is pleased with progress made in diversity research since the passage of the 21st Century Cures Act in 2016. It would, however, like to see more research into genetic and epigenetic factors that underlie cultural, ethnic, racial, socioeconomic, geographic, and sex differences in bone mass, fracture risk, and fracture repair. Along with the J. Robert Gladden Orthopaedic Society and the Ruth Jackson Orthopaedic Society, AAOS has also supported the Medical Education for a Diverse America Act, which would give medical school residents the opportunity to take courses in cultural competency to better serve patients from communities of color.

To increase diversity in the health professional workforce, AAOS supported the Resident Physician Shortage Reduction Act, which requires the Comptroller General to conduct a study on strategies for increasing the diversity of the health professional workforce. The study is intended to include an analysis of strategies for increasing the number of health professionals from rural, lower-income, and underrepresented minority communities, including which strategies are most effective for achieving that goal.

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