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PARTNERS DISCUSS IMPACT OF A U.S. SUPREME COURT RULING WITH SHRM

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In a 6-to-3 decision in *Bostock* on June 15, 2020, the U.S. Supreme Court ruled that workplace discrimination because of an individual's sexual orientation or gender identity — including being transgender — is unlawful discrimination "because of sex" under Title VII of the Civil Rights Act of 1964. In an interview with *SHRM*, **Jeff Smith** and **Randy Coffey** share their insights about how the ruling will impact employers.

In the article Jeff explores how the ruling might impact employee benefits and the previously issued U.S. Health and Human Services (HHS) final rule under Section 1557 of the Affordable Care Act (ACA) eliminating anti-discrimination protections based on gender identity in the context of health care and health insurance. He explains that "the Supreme Court ruling does not directly impact the recent HHS rule" because the HHS interpretation is based on Section 1557 of the ACA while the Supreme Court was interpreting provisions of Title VII. "That said, it does demonstrate a shift in the legal landscape, and it may be harder for HHS to enforce the interpretation it has just released," he added.

For his part of the interview, Randy cautions that employers should expect a wave of litigation over the "outer reaches" of the *Bostock* decision. He explains that "[t]here is no question that there will be many new filings alleging discriminatory failures to hire, harassment and hostile work environment claims, and discriminatory termination, all based on the sexual orientation, transgender status or gender identity of applicants and employees." Randy says that now is the time for employers to thoroughly review their

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application, hiring and ongoing work processes to look for issues that may relate to these areas.

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