

EEOC Files First Sexual Orientation Discrimination Suits

MARCH 2, 2016

On March 1, 2016, the U.S. Equal Employment Opportunity Commission (EEOC) filed its first two lawsuits against private sector employers alleging that sexual orientation discrimination is included under Title VII of the Civil Rights Act of 1964's prohibitions against unlawful sex bias. (See *EEOC v. Scott Medical Center*, W.D. Pa., No. 16-225; and *EEOC v. Pallett Cos. dba IFCO Sys. NA*, D. Md, No. 16-595). Although U.S. Courts of Appeals have yet to issue a decision finding that Title VII covers sexual orientation discrimination, two federal appeals courts have allowed LGBT workers to pursue Title VII sex discrimination claims based on a sexual stereotyping theory. Additionally, the EEOC has argued in prior cases, including in the federal employment sector, that Title VII includes sexual orientation discrimination. (See [Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination](#)). In a press release related to the filing of the two suits, the EEOC states that it "is continuing to solidify its commitment to ensuring that individuals are not discriminated against in workplaces because of their sexual orientation."... "While some federal courts have begun to recognize this right under Title VII, it is critical that all courts do so."

In *EEOC v. Scott Medical Health Center*, the EEOC alleges that a gay male employee was subjected to harassment because of his sexual orientation when his manager repeatedly referred to him using various anti-gay epithets and made other highly offensive comments about his sexuality and sex life. According to the complaint, when the employee complained to his director, the director responded that the manager was "just doing his job," and refused to take any action to stop the harassment. The employee subsequently quit his job.

In *EEOC v. IFCO Systems*, the EEOC claims that a lesbian employee was harassed by her supervisor because of her sexual orientation. The EEOC alleges that the employee's supervisor made numerous comments to her regarding her sexual orientation and appearance, such as "I want to turn you back into a woman," and "you would look good in a dress." The EEOC also alleges the supervisor made sexually suggestive gestures towards the employee on at least one occasion, and that IFCO fired the employee in retaliation for her complaints about the harassment.

Last summer, in July 2015, in a federal sector decision, the EEOC argued that sexual orientation discrimination is discrimination because of sex under Title VII. See *Baldwin v. Dep't of Transp.*, Appeal No. 0120133080 (July 15, 2015). In that case, the EEOC explained its view that: (1) sexual orientation discrimination necessarily involves treating workers less favorably because of their sex because sexual orientation as a concept cannot be understood without reference to sex; (2) sexual orientation discrimination is rooted in non-compliance with sex stereotypes and gender norms, and employment decisions based in such stereotypes and norms have long been found to be prohibited sex

discrimination under Title VII; and (3) sexual orientation discrimination punishes workers because of their close personal association with members of a particular sex, such as marital and other personal relationships.

The EEOC has said in its [Strategic Enforcement Plan](#) that addressing emerging and developing issues, especially related to coverage of lesbian, gay, bisexual, and transgender individuals under Title VII's sex discrimination provisions is one of the agency's top priorities. As such, employers should expect the agency to conduct aggressive investigations and file additional cases seeking court approval of its interpretation of Title VII. In addition, employers also should remember that many state and local laws already prohibit discrimination based upon sexual orientation. Employers should consult with counsel, and review policies and procedures to ensure compliance with any local, state, or federal anti-discrimination legislation.

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