

Client Alert **Employment & Labor**

EEOC Files Title VII Lawsuits on Behalf of LGBT Employees

On March 1, 2016, the Equal Employment Opportunity Commission (EEOC) announced its groundbreaking commencement of two lawsuits charging employers with illegally discriminating against employees on the basis of their sexual orientation. Currently, as drafted, Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees on the basis of sex but does not include specific protections for sexual orientation. Consequently, many federal courts have declined to extend Title VII to prohibit discrimination in the workplace that is exclusively based on sexual orientation.

The EEOC has taken the position that sexual orientation discrimination is, by its very nature, discrimination because of sex. In a July 15, 2015 federal sector decision, the EEOC clarified why Title VII's prohibition of sex discrimination includes discrimination because of sexual orientation: (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 on 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. See *Baldwin v. Dep't of Transp.*, Appeal No. 0120133080 (July 15, 2015).

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As the EEOC's General Counsel David Lopez explained "[w]ith the filing of these two suits, EEOC is continuing to solidify its commitment to ensure that individuals are not discriminated against in workplaces because of their sexual orientation...[w]hile some federal courts have begun to recognize this right under Title VII, it is critical that all courts do so."

In its suit against Scott Medical Health Center, filed in the U.S. District Court for the Western District of Pennsylvania, the EEOC charged that a gay employee was subjected to harassment because of his sexual orientation. According to the agency, the employee's manager repeatedly referred to the employee using numerous anti-gay epithets and made other highly offensive comments about his sexuality and sex life. The EEOC contends that after the employee complained to a supervisor, the employer refused to take any action to stop the harassment.

Similarly, in its suit against IFCO Systems, filed in the U.S. District Court for the District of Maryland, the EEOC charged that a lesbian employee was harassed by her supervisor because of her sexual orientation. In this case, the agency alleges that the employee's supervisor made various 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." According to the EEOC's allegations in the suit, at one point the supervisor blew a kiss at the lesbian employee and circled his tongue at her in a suggestive and derogatory manner. The EEOC further contends that the employee was terminated in retaliation for making complaints to management about the harassment.

In both cases, the EEOC argues that by failing to address the employees' complaints of a hostile work environment on this basis or by retaliating against an employee who complained about such harassment, the employers committed illegal sex discrimination under Title VII.

Tips for Employers:

Employers should be mindful of these new developments when revising handbooks and conducting employee and management training. Although legislation that explicitly includes sexual orientation as a protected category under Title VII has not yet been passed in Congress, the EEOC's recent sexual orientation-based lawsuits, the Supreme Court's historic rulings on gay marriage, as well as the expanding protections seen in New York and other states as discussed in our [January alert](#), signal that such legislation may be on the horizon.

The following attorneys in our Employment and Labor Law Practice Group can assist employers in understanding and complying with these workplace developments.

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