

LABOR AND EMPLOYMENT LAW ALERT

Federal Circuit Court of Appeals Rules that Title VII Covers Workplace Sexual Orientation Bias

For the first time ever, a federal appeals court has ruled that employees cannot be discriminated against in the workplace based on their sexual orientation under Title VII of the 1964 Civil Rights Act. The Seventh Circuit Court of Appeals in Chicago made this ruling on April 4, 2017 by a vote of 8-3.

The case involved a community college instructor in Indiana who alleged that she was passed over for a full-time job because she identified as homosexual. The court concluded that discrimination based on sexual orientation is a form of sex discrimination, and overturned a lower district court's ruling that had found against the college instructor. The court stated that, "[a]ny discomfort, disapproval, or job decision based on the fact that the complainant—woman or man—dresses differently, speaks differently, or dates or marries a same-sex partner, is a reaction purely and simply based on sex. That means that it falls within Title VII's prohibition against sex discrimination, if it affects employment in one of the specified ways."

However, this decision is at odds with another recent federal appeals court decision. The Eleventh Circuit Court of Appeals in Atlanta recently held that employers are not prohibited from discriminating against employees based on sexual orientation. In New York, the Second Circuit Court of Appeals has also determined that sexual orientation discrimination is not actionable under Title VII. On March 20, 2017, a three judge panel at the Second Circuit confirmed in *Christiansen v. Omnicom Group, Inc.* that it was bound by this precedent, but added that the issue should be revisited by a full panel of the Second Circuit, which would have authority to reverse course. Thus, the issue seems ripe for review by the United States Supreme Court.

Christiansen also reaffirmed that gender stereotyping, such as harassing a male employee by describing him in derogatory feminine terms, can violate Title VII. Further, in New York sexual orientation is protected under state law. The Sexual Orientation Non-Discrimination Act of 2003 added sexual orientation as a protected status under various state laws, including the Human Rights Law, the Civil Rights Law and the Education Law.

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