



The EEOC Calls for Federal Judge to Continue with Sexual Orientation Discrimination Case

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The Equal Employment Opportunity Commission (“EEOC”) asked U.S. District Court Judge Cathy Bissoon in the Western District of Pennsylvania to reject a motion to dismiss in a lawsuit alleging a worker was discriminated against on the basis of his sexual orientation.

The lawsuit, originally filed in March by the EEOC, alleges that Dale Baxley, a gay employee of Scott Medical Health Center PC, was harassed on the basis of his sexual orientation, violating Title VII of the Civil Rights Act. The EEOC claims that Baxley’s supervisor called him a “fag” and “queer” and made crude inquiries as to his sex life, ultimately resulting in his inability to continue working at the company.

By its plain language, Title VII dictates that employers may not discriminate against their employees on the basis of sex, race, color, national origin, or religion. When the legislation was originally drafted in 1964, Congress did not include “sexual orientation.” There have been continuous challenges in recent years, however, arguing that sexual orientation should be covered by the statute. Indeed, the EEOC has argued in its administrative decision in *Baldwin v. Department of Transportation*, Appeal No. 0120133080 (July 15, 2015), that sexual orientation discrimination, in reality, constitutes discrimination on the basis of sex.

The argument proceeds that an individual who discriminates against an employee on the basis of sexual orientation views gender stereotypically, attributing characteristics to someone based on their gender. It is a stereotype that individuals are attracted to someone of the opposite sex. Discriminating against someone for not conforming to this stereotype, therefore, would be discrimination based on sex, which would fall squarely within Title VII.

The response marks the EEOC’s continuing effort through guidance and amicus briefs to urge courts to hold that discrimination on the basis of sexual orientation violates Title VII. In its ongoing fight, the EEOC compares a violation of a gay worker’s right to be free from discrimination in the workplace to the Supreme Court’s landmark decision in *Obergefell v. Hodges* in which the Court held that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The EEOC Commissioner, Chai Feldblum, said in an interview to Reuters that *Obergefell* “paved the way for judges to accept expansive views of civil rights laws.”

This case was filed amidst similar lawsuits pending in the Second, Seventh, and Eleventh Circuits, which may ultimately place the issue before the Supreme Court. Employers are advised to pay close attention to this area of

the law, as it has the potential to have significant practical as well as legal implications.

If you have any questions or concerns regarding employment related issues, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

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