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# Seventh Circuit: Title VII Does Not Cover Sexual-Orientation Discrimination

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The Seventh Circuit Court of Appeals, in a decision on July 26, 2016, held that Title VII, a chapter of the federal Civil Rights Act of 1964 that protects employees from being discriminated against based upon race, sex, religion, and national origin, does not protect employees against discrimination based upon sexual orientation.

In *Hively v. Ivy Tech Community College*, Kimberly Hively, a female instructor at Ivy Tech Community College in Indiana (the "College"), alleged that she was consistently denied a full-time position at the College because she is a lesbian. The College, on the other hand, argued that there are no federal or state laws in Indiana which prohibit sexual orientation discrimination.

The Equal Employment Opportunity Commission (the "EEOC") offered guidance to employers last June, stating that Title VII's prohibition of sex-based discrimination included the prohibition on sexual orientation-based discrimination as well. Subsequently, the EEOC issued an administrative ruling that supported this interpretation. The Seventh Circuit was the first federal appeals court to consider this issue since the EEOC's guidance and opinion was released and rejected the EEOC's position on sexual orientation-based discrimination.

The three-judge panel of the Seventh Circuit found that the Court was bound by precedent, despite the EEOC's position on the matter. The Court stated that "[its] precedent has been unequivocal in holding that Title VII does not redress sexual orientation discrimination." The Court further held that the EEOC does not have the authority to supersede judicial precedent. It appears that the panel hoped that they could have held for Hively, stating that "[i]t seems unlikely that our society can continue to condone a legal structure in which employees can be fired, harassed, demeaned, singled out for undesirable tasks, paid lower wages, demoted, passed over for promotions, and otherwise discriminated against solely based on who they date, love, or marry." However, the Court noted that until it has binding authority in the form of a Supreme Court opinion or new or amended legislation, its hands are tied.

The Seventh Circuit is the first federal appeals court to tackle this question, but it will most likely not be the last. There are at least two appellate cases which raise the same issue pending in the Second and Eleventh Circuits. Those case are *Christiansen v. Omnicom Group Inc.*, 2d Cir., No. 16-748 and *Evans v. Georgia Regional Hospital*, 11th Cir., No. 15-15234, respectively.

*If you have any questions or concerns regarding education or employment related issues, please contact Thomas B. Wassel at twassel@cullenanddykman.com or at 516-357-3868.*

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