

Legal Update

August 2015

EEOC RULES SEXUAL ORIENTATION DISCRIMINATION IS NOW PROTECTED UNDER FEDERAL LAW

By Jon Vegosen and Cecilia M. Suh

The U.S. Equal Employment Opportunity Commission (EEOC) has issued an administrative [decision](#) ruling that employment discrimination based on sexual orientation is unlawful under Title VII of the Civil Rights Act of 1964 (Title VII). While Title VII prohibits employment discrimination based on an individual's race, color, religion, sex, or national origin, it does not explicitly include sexual orientation as a protected basis. The EEOC, however, has now adopted an expansive interpretation of Title VII. It recently concluded that employment discrimination based on sexual orientation is inherently discrimination based on an individual's sex and therefore prohibited under Title VII.

The EEOC's Administrative Decision

In [Baldwin v. Fox](#), a temporary Federal Aviation Administration (FAA) employee alleged that the FAA discriminated against him based on sex when he was not selected for a permanent position. The employee claimed that he was denied the permanent position because he was gay. He alleged that his supervisor had made several negative comments about the employee's sexual orientation, including telling the employee "we don't need to hear about that gay stuff" and that he was "a distraction in the radar room" when he talked about his male partner.

Although the EEOC declined to rule on the merits of the employee's claim, the EEOC broadly interpreted Title VII's protections against sex-based discrimination and ruled that the employee's allegations of sexual orientation discrimination stated a claim of discrimination based on sex under Title VII. In its [ruling](#), the EEOC forcefully declared that there is an "inescapable link" between allegations of sexual orientation discrimination and sex discrimination and that "[s]exual orientation discrimination *is* sex discrimination because it necessarily entails treating an employee less favorably because of the employee's sex" (emphasis added). The EEOC further ruled that federal agencies should treat claims of sexual orientation discrimination as complaints of sex discrimination under Title VII.

Suggestions for Employers

While the EEOC's decision governs charges of discrimination that are filed with the EEOC, it is not binding on federal courts, which decide suits for sex discrimination and review EEOC determinations. Prior to the EEOC's ruling, federal courts had generally declined to extend Title VII's protections against sex-based discrimination to claims alleging discrimination based on sexual orientation. It remains to be seen whether federal courts will adopt the EEOC's recent conclusion in future litigation of sexual orientation discrimination claims.

FVLD®

That being said, employers may still need to comply with other applicable laws prohibiting employment discrimination based on sexual orientation. More than 20 states currently prohibit sexual orientation discrimination in the workplace. For example, the [Illinois Human Rights Act](#) prohibits employers who have 15 or more employees in Illinois from engaging in unlawful discrimination based on sexual orientation, including actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity. The [Cook County Human Rights Ordinance](#) also prohibits employers with one or more employees, which have their principal place of business within Cook County or do business within Cook County, from discriminating against a person because of the person's sexual orientation or gender identity. The [City of Chicago Human Rights Ordinance](#) similarly prohibits employment discrimination based on sexual orientation or gender identity.

Given these developments as well as the recent U.S. [Supreme Court decision](#) holding that same-sex couples may exercise the fundamental right to marry, employers should be mindful of sexual orientation issues in the workplace. Employers should also review their equal employment opportunity, anti-discrimination, and anti-harassment policies and consult with counsel regarding compliance with federal, state, and local laws requiring equal employment opportunity or prohibiting discrimination or harassment.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen 312.701.6860 jvegosen@fvldlaw.com, Cecilia M. Sub 312.701.6841 csub@fvldlaw.com, or your regular FVLD contact.

FVLD®

© 2015, Funkhouser Vegosen Liebman & Dunn Ltd.
All rights reserved.