

March 2016 Special Edition

EEOC Files First Sexual Orientation Discrimination Lawsuits: Addressing Trends in LGBT Discrimination Law and Employer Best Practices



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As part of its strategic enforcement plan for 2013-2016, the EEOC adopted as a national priority coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions. In keeping with this objective, the EEOC has recently filed its first two lawsuits addressing sexual orientation discrimination. On March 1, the agency filed a lawsuit in the Western District of Pennsylvania against *Scott Medical Health Center*, alleging that it discriminated against charging party Dale Baxley, a gay male, on the basis of sex in violation of Title VII, when it subjected him to harassment because of his sex (male). According to the EEOC's lawsuit, Baxley's manager routinely made unwelcome and offensive comments, including regularly calling him "fag," "faggot," and "queer," and making statements such as "f***ing queer can't do your job," at least three to four times a week. The EEOC alleges this conduct was based on Baxley's sex, because "sexual orientation discrimination necessarily entails treating an employee less favorably because of his sex; in that Baxley, by virtue of his sexual orientation, did not conform to sex stereotypes and norms about males . . . and in that [Baxley's supervisor] objected generally to males having romantic and sexual association with other males, and objected specifically to Baxley's close, loving association with his male partner."

Also on March 1, the EEOC filed suit against *Pallet Companies d/b/a IFCO Systems NA, Inc.*, in the District of Maryland alleging Yolanda Boone, a lesbian, was harassed because of her sexual orientation and/or her nonconformity with stereotypical female gender norms. Although status as an LGBT individual is not specifically "protected" under Title VII, these lawsuits follow the EEOC's trend, beginning in 2014, of protecting LGBT individuals under Title VII on grounds of sex-stereotyping gender discrimination—a trend which has gained traction throughout United States courts.

Employer Best Practices

Based on this trend, employers should take care to adopt policies preventing all types of sexual discrimination, including discrimination based on sexual orientation and transgender status. This means an employer should consider zero tolerance policies and strictly prohibit treating individuals unfairly based on sexual orientation or gender identity, as well as prohibit slurs and stereotypes intended to cause a hostile work environment. Further, employers should be prepared to make reasonable accommodation for transgender individuals with respect to dress codes, rest rooms, and managing employee privacy and confidentiality with regard to transitioning employees. Training employees and supervisors on sexual orientation and gender identity issues helps to raise awareness and increase tolerance. Employers should also be aware of applicable state laws which explicitly prohibit discrimination based on sexual orientation.