



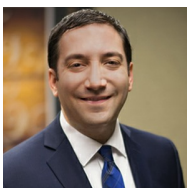
As many employers are no doubt aware, the Equal Employment Opportunity Commission (EEOC) has focused on expanding Title VII's protections against sex and gender discrimination to include coverage of lesbian, gay, bisexual, and transgender (LGBT) individuals (please watch [Navigating a New Frontier: LGBTQ Issues in the Workplace](#) for more information on this issue). Given the relatively early stage of this policy initiative, most employers may be impacted, if at all, when addressing employees' charges of discrimination filed with the EEOC. Employers can no longer expect the EEOC to dismiss, on jurisdictional grounds, administrative complaints of discrimination, retaliation, and harassment based on sexual orientation or gender identity.

Claims based on sexual orientation as a protected category under Title VII have also been developing in the federal court system. Notably, last month, the United States Court of Appeals for the Seventh Circuit became the first federal appeals court to address sexual orientation discrimination under Title VII. In *Hively v. Ivy Tech Community College*, the plaintiff, a part-time college instructor, alleged that the defendant, her employer, refused to grant her a full-time position and denied her promotions because she is a lesbian. Although the Seventh Circuit pointed out the evolving legal landscape on LGBT issues, it still dismissed the case, holding that Title VII, as currently written, does not prohibit bias based on sexual orientation. In reaching this decision, the court rejected the EEOC's position that Title VII should be interpreted to cover sexual orientation as a protected class.

Notwithstanding the Seventh Circuit's decision in *Hively*, overall, the EEOC may be making headway on its goal of obtaining legal protections for LGBT individuals. Also last month, the EEOC entered into its first settlement with an employer in a Title VII sexual orientation discrimination case. In that case, the EEOC filed suit under Title VII against IFCO Systems on behalf of a former employee, who alleged that she was subjected to harassment by her manager because she is a lesbian. The EEOC further claimed that IFCO Systems discharged the employee after she complained about the harassment. As part of this unprecedented settlement, the employer will pay the former employee \$182,200 in damages, as well as \$20,000 to an LGBT advocacy group. The employer also agreed to hire an expert to conduct company-wide training on sexual orientation, gender identity, and transgender issues in the workplace.

Considering these two cases, employers must be cognizant of LGBT discrimination issues. The terms of the IFCO Systems settlement, which are highly favorable for the EEOC and the former employee, reflect the mounting challenges facing employers in defending against sexual orientation discrimination claims. Likewise, the *Hively* court seemingly acknowledged that its ruling will likely become outdated in the near future, stating that "perhaps the writing is on the wall" for a change in federal law to provide protections from sexual orientation discrimination. With at least two similar cases pending in other federal appeals courts, and several cases pending across the country in federal district courts, we can expect the United States Supreme Court to eventually take on this issue, particularly in light of the highest court's recent rulings trending in favor of LGBT rights. Moreover, given that LGBT issues are front and center in this election cycle, Congress is likely to consider changes to existing federal statutes and reconsider new legislation, such as the Equality Act.

The attorneys at McDonald Hopkins are closely monitoring developments in LGBT workplace issues and will provide you with further updates as soon as they are available. Stay tuned!



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