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# Pennsylvania Federal Court Issues Groundbreaking Opinion on Sexual Orientation Discrimination

By Mario R. Bordogna / Nov 10, 2016

While the stunning election of Donald Trump as this country's 45th President certainly will go down as historic, it's not the only groundbreaking news to have impacted the societal and employment landscape over the last week.

On Friday, November 4, 2016, Judge Cathy Bissoon of the United States District for the Western District of Pennsylvania issued a landmark decision in which she concluded that discrimination on the basis of sexual orientation falls within the protection of Title VII of the Civil Rights Act of 1964.

In *EEOC v. Scott Medical Health Center, P.C.*, the Equal Employment Opportunity Commission (EEOC) brought a suit on behalf of a gay male who the Commission alleged was constructively discharged by his employer, Scott Medical Health Center, because one of the Health Center's managers had created a sexually hostile work environment. Specifically, the EEOC claimed that the manager regularly called the employee a "faggot" and "queer" at least three to four times a week, repeatedly asked the employee about his sexual experiences and preferences, and made other comments critical of the employee's relationship with another male, all of which forced the employee to quit.

The employer attempted to dismiss the claim by taking the position that Title VII does not prohibit discrimination on the basis of sexual orientation. However, Judge Bissoon disagreed, holding that Title VII's "because of sex" provision prohibits discrimination on the basis of sexual orientation. In doing so, she indicated that she saw no meaningful difference between sexual orientation discrimination and discrimination "because of sex," citing a range of United States Supreme Court precedent for support, including two landmark Supreme Court cases - *Price Waterhouse v. Hopkins*, which prohibited sex stereotyping as violative Title VII, and *Oncale v. Sundowner Offshore Services, Inc.*, which made same-sex harassment actionable under Title VII. Some particular language in Judge Bissoon's opinion is worth emphasizing:

Indeed, the Court finds discrimination on the basis of sexual orientation is, at its very core, sex stereotyping plain and simple; there is no line separating the two ... Forcing an employee to fit into a gendered expectation - whether that expectation involves physical traits, clothing, mannerisms, or sexual attraction - constitutes sex stereotyping and, under *Price Waterhouse*, violates Title VII.

Judge Bissoon didn't simply rely on more traditional United States Supreme Court precedent to support her view, however. Pointing out that changes over time have broadened Title VII's protections against discrimination in the workplace, she also referenced both the recent United States Supreme Court opinion in *Obergefell v. Hodges*, which legalized gay marriage, as well as other recent federal District Court opinions that have endorsed the perspective that Title VII includes a prohibition on discrimination based on sexual orientation.

Without a doubt, Judge Bissoon's decision is one which all employers in Pennsylvania - and even throughout the country - must be aware of. The EEOC has long pressed the view that Title VII's protections include those based on sexual orientation, and courts across the country are now increasingly coming on board. In fact, it would not be surprising if the Seventh Circuit Court of Appeals soon agrees, after the full Court recently decided to re-hear a panel decision of the Court which initially rejected that viewpoint this summer in *Hively v. Ivy Tech Community College*.

As legal protections afforded to employees who may fit within the parameters of the LGBT community continue to grow, employers need to act with continued or even increased caution as it relates to employment decisions involving those workers. If you have any questions or need assistance in this area, please contact Mario R. Bordogna at (412) 394-2487 | [mbordogna@clarkhill.com](mailto:mbordogna@clarkhill.com), or another member of Clark Hill's Labor and Employment Practice Group.