



EEOC: Sexual Orientation Discrimination Is Sex Discrimination

By Allen Smith 7/20/2015

A July 16, 2015, Equal Employment Opportunity Commission (EEOC) decision clarifies that all complaints of discrimination on the basis of sexual orientation are sex discrimination claims under Title VII of the Civil Rights Act of 1964, at least for claims against the federal government.

“Earlier decisions had held only that a person discriminated against on the basis of sexual orientation could allege that she or he was discriminated against on the basis of sex stereotypes in violation of Title VII,” noted Justine Lisser, spokeswoman and senior attorney-advisor in the EEOC’s Office of Communications and Legislative Affairs.

Air Traffic Control Specialist’s Claim

The case involved a supervisory air traffic control specialist with the Department of Transportation’s air traffic control tower at Miami International Airport. He asserted that because he is gay, he was discriminated against and was not selected for a permanent position as a front-line manager.

His supervisor, who was involved in the selection process, allegedly had made several negative comments about the specialist’s sexual orientation. For example, when the specialist mentioned that his partner and he attended Mardi Gras in New Orleans, the supervisor said, “We don’t need to hear about that gay stuff.” And a number of times he was told he was a “distraction in the radar room” when he participated in conversations and mentioned his male partner.

Agency’s Reasoning

The EEOC held that a sexual orientation discrimination claim is a claim of sex discrimination under Title VII because it:

- Relies on sex-based considerations or takes gender into account when there is a challenged employment action.
- Is associational discrimination on the basis of sex.

- Necessarily involves discrimination based on gender stereotypes.

The fact that sexual orientation isn't mentioned in Title VII isn't relevant, according to the agency. Nor is the fact that the legislators didn't intend for the law to protect individuals based on sexual orientation. And it is beside the point that Congress has debated, but not yet passed, legislation explicitly providing protections for sexual orientation, the agency added. The text of the statute simply mentions "sex" as a prohibited ground of discrimination, and sexual orientation discrimination clearly is sex discrimination.

"We conclude that sexual orientation is inherently a 'sex-based consideration,' and an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII," the EEOC stated.

It held that the complainant had stated a claim of discrimination on the basis of sex.

Big Impact

If courts apply this decision to the private sector, as they might, it could have a big impact in states that don't have provisions prohibiting discrimination based on sexual orientation, remarked David Rapuano, an attorney with Archer & Greiner in Haddonfield, N.J.

He attributed the agency's decision in part to the Supreme Court's recent ruling in favor of gay marriage. The fact that some in the culture may view same-sex sexual orientation differently doesn't matter when it comes to interpreting the law, Rapuano said.

And the case is "another tool to impress on managers that this is an important issue."