

Courts Consider New Definition Of “Sex” Discrimination – What It Means For Pennsylvania Employers

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Can employees in Western Pennsylvania sue their employer for sexual orientation discrimination under federal law? Right now, the answer is no – but that may be changing soon.

In a landmark case called *EEOC v. Scott Medical Health Center, P.C.* (“*Scott Medical*”), the Equal Employment Opportunity Commission (“EEOC”) is arguing for the first time that federal law prohibits an employer from discriminating against an employee based on their sexual orientation. See *EEOC Files First Suits Challenging Sexual Orientation Discrimination as Sex Discrimination*, U.S. Equal Employment Opportunity Commission (Mar. 1, 2016), <https://www.eeoc.gov/eeoc/newsroom/release/3-1-16.cfm>. Title VII of the Civil Rights Act of 1964 (“Title VII”) long has prohibited discrimination based on “sex,” but does not explicitly include “sexual orientation.” Federal courts thus have ruled that “sex” discrimination does not include sexual orientation claims. Consequently, employees currently cannot sue employers for sexual orientation discrimination under federal law.

The EEOC is seeking to change that interpretation through cases like *Scott Medical*. The crux of the EEOC’s argument is that sexual orientation discrimination inevitably involves references to a person’s “sex.” Sexual orientation discrimination thus is a type of “sex” discrimination outlawed by Title VII.

Scott Medical illustrates this argument. In this case, a company manager allegedly harassed a gay male employee about his relationship with another man. The company president did not punish the manager, and the employee eventually resigned. According to the EEOC, the manager’s harassment was based on “sex” because if the employee were a woman – rather than a man – his manager would not have discriminated against him due to his relationship with another male.

Employers in Western Pennsylvania should expect to face more cases like *Scott Medical* in the future. Prohibiting workplace discrimination based on sexual orientation is one of the EEOC’s top national priorities. See *U.S. Equal Employment Opportunity Commission Strategic Enforcement Plan FY 2013-2016*, U.S. Equal Employment Opportunity Commission, <https://www.eeoc.gov/eeoc/plan/sep.cfm>. A successful outcome in *Scott Medical* likely will encourage the EEOC to pursue more of these cases.

To avoid becoming entangled in one of these lawsuits, employers should do three things:

- Closely monitor and understand changes to “sex” discrimination law under Title VII;
- Review workplace policies and practices, especially as they relate to “sex” and “sexual orientation”;
- Change workplace policies and practices as needed to satisfy new legal obligations.

Through these proactive steps, employers can reduce the possibility of time-consuming and expensive litigation, and instead focus on what they do best: running their business.

If you have any questions about your obligations as an employer under Title VII, please do not hesitate to contact Shane Miller at (412) 594-5503. Special thanks to law student Angela Giglio for her contributions to this post.