

Pittsburgh Pennsylvania Federal Judge: Employers Cannot Discriminate Based on Sexual Orientation

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On November 4, 2016, a federal judge in Pittsburgh ruled that federal law prohibits an employer from discriminating against an employee based on their sexual orientation. In light of this decision by Judge Cathy Bissoon in *EEOC v. Scott Medical Health Center, P.C.*, employers in Pittsburgh and the surrounding areas should reevaluate their employment policies and practices to ensure that they still comply with federal law.

Judge Bissoon's decision reflects a slow-but-steady shift in how some judges are interpreting federal law relating to sexual orientation discrimination. Title VII of the Civil Rights Act of 1964 ("Title VII") has prohibited discrimination "because of sex" since its passage more than fifty years ago. In the past, however, federal courts have ruled that discrimination "because of sex" does not include sexual orientation discrimination. Federal law thus did not prohibit employers from discriminating against employees based on their sexual orientation.

Judge Bissoon reached a different conclusion in her decision on November 4, 2016. She explicitly ruled that Title VII "prohibits discrimination on the basis of sexual orientation." She found no meaningful difference between sexual orientation discrimination and discrimination "because of sex" because sexual orientation discrimination inevitably involves judgments about how a person should or should not behave based on their sex. In Judge Bissoon's words, "Discrimination on the basis of sexual orientation is, at its very core, sex stereotyping plain and simple; there is no line separating the two."

Judge Bissoon's ruling only applies to employers who are located within the jurisdiction of the Federal District Court for the Western District of Pennsylvania. This judicial district is comprised of 25 counties in Western Pennsylvania. It spans north to Erie, Pennsylvania and south to Greene, Fayette, Somerset, and Bedford counties. It extends west to the Ohio border and east past Johnstown, Pennsylvania. The Western District also includes Allegheny County, which is home to the City of Pittsburgh.

The question of whether Title VII prohibits sexual orientation discrimination will not end with Judge Bissoon's ruling. Her decision almost certainly will be appealed, and other cases involving the same issue are being litigated in courtrooms across the United States. The issue may even eventually reach the Supreme Court of the United States. In the meantime, however, employers must monitor new developments in this area of the law and adjust their policies and practices as needed. Failure to adapt to the changing legal landscape regarding sexual orientation discrimination may lead to expensive and time-consuming litigation that could have been avoided with a better approach.

For more information on how you can ensure your company or business complies with Title VII or other workplace laws, please contact attorneys Katherine Koop Irwin (kkoop@tuckerlaw.com) or Shane Miller (smiller@tuckerlaw.com).