

## Pennsylvania Split on Sexual Orientation Discrimination

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Two recent federal district courts – from opposite sides of the Commonwealth – reached different conclusions on whether sexual orientation is a protected class under Title VII of the Civil Rights Act of 1964 (“Title VII”). On June 2, 2017, in *Coleman v. Amerihealth Caritas*, No. 16-3652, 2017 U.S. Dist. (E.D. Pa.2017), the United States District Court for the Eastern District of Pennsylvania, which has the judicial authority to make legal decisions about business and employees located and working between Lancaster County and Northampton County, ruled that sexual orientation is not a protected class under Title VII. A few months prior, on November 4, 2016, the United States District Court for the Western District of Pennsylvania, which governs Somerset County and all other counties westward, reached a different result in *United States EEOC v. Scott Med. Health Ctr., P.C.*, 217 F. Supp. 3d 834 (W.D. Pa. 2016). There, the District Court for the Western District found that discrimination based on sexual orientation is unlawful Under Title VII. Anticipating judicial review by the appellate courts, employers should be cautious when facing employee alleged sexual orientation discrimination claims.

The facts in both cases are similar: a gay male employee alleged discrimination in the workplace due to his sexual orientation. The District Court for the Western District found that discrimination based on sexual orientation was synonymous with gender discrimination under Title VII. Discrimination against an employee, due to behavior deviating from gender and societal norms is unlawful under Title VII. The District Court for the Eastern District arrived at a different conclusion, ruling that sexual orientation discrimination was not actionable under Title VII.

In coming to its decision, the District Court for the Eastern District relied on the Third Circuit’s decision in *Bibby v. Phila. Coca Cola Bottling Co.*, 260 F.3d 257 (3d Cir. 2001). There, the Third Circuit found that sexual orientation discrimination is lawful under Title VII. The court said, “the nature of injustice is that we may not always see it in our times,” hinting that the landscape and views of the nation are gradually shifting. Future appellate outcomes from the Third Circuit Court of Appeals or the United States Supreme Court may reflect differently.

Other federal courts across the country are coming to varying results on this issue, for example, some appellate courts, such as the Seventh Circuit, have found that discrimination based on sexual orientation is a form of sex discrimination. *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339 (7th Cir. 2017). The United States Supreme Court has yet to weigh in on the issue.

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