

Pennsylvania Courts Split Over Sexual Orientation Discrimination

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A recent decision by Judge Jan E. DuBois in *Coleman v. Amerihealth Caritas*, No. 16-3652, 2017 U.S. Dist. LEXIS 85319 (E.D. Pa. June 2, 2017) demonstrates that Pennsylvania courts remain divided as to whether Title VII of the Civil Rights Act of 1964 ("Title VII) prohibits sexual orientation discrimination by employers. Pennsylvania courts likely will continue to reach different rulings until this question is resolved by a higher court, such as the Third Circuit Court of Appeals or the U.S. Supreme Court.

In *Coleman*, a Philadelphia man named Justin Coleman alleged that his former employer, Amerihealth Caritas, used gay slurs against him, punched him, and spread false rumors about his gender and sexuality. Coleman sued Amerihealth Caritas for sexual orientation discrimination under Title VII. The company moved to dismiss Coleman's claim. It argued that federal law does not prohibit sexual orientation discrimination by employers.

Judge DuBois agreed with Amerihealth Caritas. She ruled that although Amerihealth Caritas's behavior was unacceptable, "Title VII does not prohibit discrimination based on sexual orientation." Judge DuBois thus dismissed Coleman's sexual orientation discrimination claim with prejudice.

This decision directly conflicts with a ruling eight months earlier by Judge Cathy Bissoon, a federal judge in the Western District of Pennsylvania. Under similar facts in *EEOC v. Scott Med. Health Ctr., P.C.*, 217 F. Supp. 3d 834 (W.D. Pa. 2016), Judge Bissoon refused to dismiss the plaintiff's sexual orientation discrimination claim. She found that Title VII barred sexual orientation discrimination because such discrimination inevitably involves judgments or stereotypes about how a person should behave based on their sex.

Pennsylvania courts are not the only ones that continue to issue different rulings on this issue. Judges across the United States have issued conflicting decisions as to whether Title VII prohibits sexual orientation discrimination. Many legal experts thus believe that the U.S. Supreme Court will eventually decide one of these cases to bring clarity and finality to this area of the law. But until that day arrives, employers should keep a close eye on how Pennsylvania judges rule on workplace sexual orientation discrimination claims so that they understand their legal obligations.

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