

# EEOC Files Lawsuit Against Employers for Sex Discrimination Under Title VII

Article By:

Todd A. Solomon

Brian J. Tiemann

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For the first time, the ***U.S. Equal Employment Opportunity Commission (EEOC)*** is suing private employers on behalf of employees alleging sexual orientation discrimination. On March 1, 2016, the EEOC issued a press release announcing it has filed its first two sexual orientation lawsuits alleging violations of *Title VII* of the ***Civil Rights Act of 1964*** (Title VII).

The language of Title VII does not expressly prohibit discrimination on the basis of sexual orientation. However, in 2015, the EEOC took the position that Title VII prohibits sexual orientation discrimination under the purview of prohibited sex discrimination. These two lawsuits appear to enforce that viewpoint.

In ***EEOC v. Scott Medical Health Center, P.C.***, a suit filed in the U.S. District Court for the Western District of Pennsylvania, the EEOC alleges that a gay male employee's manager repeatedly referred to him using various anti-gay epithets and made other offensive comments about his sexuality and sex life. When the employee made complaints to a director, the director allegedly refused to take any action to stop the harassment.

In ***EEOC v. Pallet Companies d/b/a IFCO Systems NA***, a suit filed in the U.S. District Court for the District of Maryland, the EEOC alleges that a lesbian employee was harassed by her supervisor because of her sexual orientation. The EEOC alleges that the employee complained to management and the employer allegedly retaliated by firing her.

As a result of the EEOC filing these lawsuits, employers may see increased litigation in the area of sexual orientation discrimination. To protect against potential lawsuits, employers should consider updating their nondiscrimination policies to prohibit discrimination on the basis of sexual orientation and gender identity. In addition, employers should consider engaging legal counsel to perform sexual orientation harassment training for employees and managers.

The EEOC's lawsuits also raise potential concerns for employee benefit plans. Although the Employee Retirement Income Security Act of 1974, as amended (ERISA) generally preempts state laws that relate to employee benefit plans, ERISA does not preempt other federal laws, including Title

VII. While certain spousal benefits and rights under qualified retirement plans are required by federal law to be extended to same-sex spouses, the same explicit mandates do not apply to welfare plans. Employers should consider whether any of their employee benefit plans discriminate against employees with same-sex spouses (e.g., excluding same-sex spouses from coverage under a self-funded medical plan). Such distinctions may be ripe for legal action as a result of the EEOC's actions.

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