

## INSIGHTS + NEWS

### Cote v. Wal-Mart Stores: Is Title VII the New Battleground?

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Title VII of the Civil Rights Act of 1964 prohibits hiring and employment discrimination on the basis of various characteristics, including a person's sex. However, Title VII does not explicitly mention gender identity or sexual orientation as protected characteristics, and there are no other federal laws that explicitly protect LGBTQ employees from discrimination.

Attempts to include sexual orientation within Title VII's ambit date back nearly three decades, but to date, legislative attempts to amend Title VII have been unsuccessful. In the absence of explicit statutory language, courts have been hesitant to construe Title VII protections to cover sexual orientation.

Cote v. Wal-Mart Stores is poised to take the issue head-on.

From 2006 through 2012, Jaqueline Cote, a Wal-Mart employee in Swansea, Massachusetts, was repeatedly denied spousal health insurance benefits for her wife. At the time Ms. Cote first sought spousal health insurance coverage, [Wal-Mart offered such coverage only for employees with a spouse of the opposite gender](#). Wal-Mart has since modified its policy, and as of January 1, 2014, Wal-Mart has offered spousal health insurance coverage for employees' same-sex spouses and domestic partners. In the interim, however, Ms. Cote and her wife incurred medical bills totaling more than \$150,000.

With support from GLAD, Ms. Cote filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC), alleging that Wal-Mart's refusal to provide spousal health insurance coverage prior to January 1, 2014 was a violation of state and federal law prohibiting discrimination on the basis of sex in employment. The EEOC issued a [Final Determination](#) in January of 2015, finding that there was reasonable cause to believe that Wal-Mart discriminated against Ms. Cote on the basis of her sex. The EEOC followed up shortly thereafter with a [Notice of Right to Sue](#) in May of 2015. Read the text of the EEOC's Final Determination [HERE](#) and Notice of Right to Sue [HERE](#).

On July 14, 2015, a class action lawsuit was filed in the U.S. District Court for the District of Massachusetts. [The Complaint](#) alleges that by denying same-sex spousal benefits to its employees, Wal-Mart discriminated against Ms. Cote and other similarly-situated employees on the basis of their sex. The Complaint alleges violations of Title VII of the Civil Rights Act of 1964, the Equal Pay Act, and the Massachusetts Fair Employment Practices Law. Read the full text of the Complaint at GLAD's website [HERE](#).

This case comes as no surprise. Many predicted that employment discrimination would be at the forefront of the LGBTQ rights movement following the [Obergefell](#) decision. It makes sense. [Obergefell](#) made same-sex marriage legal

in all fifty states. However, [in more than half of those states](#), there is no statutory protection from discrimination in an employment context on the basis of sexual orientation. In other words, someone could legally marry a person of the same sex, and then could be legally fired for it.

Massachusetts state law is clear on the issue: G.L. c. 151B prohibits discrimination on the basis of sexual orientation. What will be more interesting is what the U.S. District Court for the District of MA does with the Title VII issue in this case.

The EEOC recently ruled that workplace discrimination on the basis of sexual orientation constitutes gender discrimination under Title VII of the Civil Rights Act of 1964 (you can read more about that [HERE](#)). However, federal courts are not required to follow the EEOC's ruling and several federal courts previously have decided that discrimination on the basis of sexual orientation is not discrimination on the basis of sex under Title VII.

It remains to be seen how the U.S. District Court will come out on the Title VII issue, but one thing is certain: Cote v. Wal-Mart Stores is a case to watch.