EEOC Solidifies Its Position That Sexual Orientation Discrimination Is Sex Discrimination

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Earlier this month, the Equal Employment Opportunity Commission (EEOC), the federal law enforcement agency responsible for interpreting Title VII of the Civil Rights Act of 1964, filed its first two sex discrimination cases based on sexual orientation. One suit is in federal court in Pennsylvania against Scott Medical Health Center and the other is in federal court in Maryland against Pallet Companies, d/b/a IFCO Systems NA.

In the case against Scott Medical Health Center, the EEOC alleges that a gay male employee was harassed because of his sexual orientation. The employee's manager allegedly repeatedly referred to him using anti-gay epithets and made very offensive comments to him about his sexuality and sex life. When he complained to the clinical director, the director allegedly told him that the manager was "just doing his job," and refused to act to stop the harassment. The employee ultimately had to quit to escape the harassment.

In the case against IFCO Systems, the EEOC alleges that a lesbian employee was harassed by her supervisor because of her sexual orientation. He allegedly made numerous comments to her about her appearance and sexual orientation, like "I want you to turn back into a woman" and "you would look good in a dress." The suit also alleges that the supervisor blew her a kiss and circled his tongue at her in a suggestive way. The employee complained to management and called the employee hotline about the harassment. She was fired a few days after making those complaints.

Title VII prohibits discrimination because of sex. The LGBTQ community has long argued that sexual orientation should be recognized as a protected class in the eyes of the law, and discrimination based on sexual orientation should be considered discrimination based on sex and therefore prohibited. But, the answer as to whether sexual orientation is actually a protected class has been vague given the language of the law.

However, in July 2015, in Baldwin v. Department of Transportation, the EEOC took a position on the debate and determined that sexual orientation discrimination, by definition, is discrimination based on sex and therefore is barred under Title VII.

The filing of these two sexual orientation discrimination cases validates this position. EEOC's general counsel David Lopez commented: "With the filing of these two suits, EEOC is continuing to solidify its commitment to ensuring that individuals are not discriminated against in workplaces because of their sexual orientation… While some federal courts have begun to recognize this right under Title VII, it is critical that all courts do so."

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