EEOC Rules that Title VII Includes Protection from Discrimination Based on Sexual Orientation

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On July 15, 2015, the U.S. Equal Employment Opportunity Commission delivered a monumental ruling establishing that workplace discrimination against lesbian, gay, and bisexual people constitutes gender discrimination under Title VII of the Civil Rights Act of 1964.

In Complainant v. Foxx, the complainant, who was a Federal Aviation Administration temporary front line manager in Miami, FL, alleged that he was not promoted to the permanent front line manager position because he was an openly gay man.

While the EEOC did not decide the issue on the merits, it did find that Title VII forbids discrimination on the basis of sexual orientation. The EEOC found that, although Title VII does not explicitly address discrimination on the basis of sexual orientation, "sexual orientation is inherently a 'sex-based consideration,'" because the concept cannot be defined or understood without reference to sex. The EEOC asserted that "sexual orientation is inseparable from and inescapably linked to sex and, therefore, allegations of sexual orientation discrimination involve sex-based considerations."

You can read the EEOC's opinion HERE.

In issuing its decision, the EEOC rejected the holdings on several circuit court decisions that Title VII does not include protection from discrimination based on sexual orientation.

How encompassing is the decision and what does it mean?

The decision is binding on federal agencies; however, EEOC decisions are not binding on private employers. Although federal courts may give deference to EEOC decisions, they are not required to do so. Because there is a fair amount of

case law holding that sexual discrimination is not discrimination on the basis of sex under Title VII, it is unclear whether federal courts will follow the EEOC's analysis.

Should a federal court follow the EEOC's footsteps, the decision may affect employers with fifteen or more employees. That would be noteworthy, considering the fact that an impressive number of states currently offer little or no protection from employment discrimination to LGBT employees.

Regardless of how a federal court would come out on the issue, Massachusetts state law has long-prohibited discrimination on the basis of sexual orientation under G.L. c. 151B, and its jurisdiction is broader, requiring compliance from employers with six or more employees.