



## THE CASE FOR INCLUSION

News and Legal Analysis on Issues Related to Diversity and Inclusion

### Missouri Court Finds No Protection Under the Law for Employee Tormented and Fired for Being Gay

NOVEMBER 21, 2015

Back in July of this year, our co-editor, Jennifer Garner, [reported](#) on the Equal Employment Opportunity Commission's ("EEOC") landmark opinion in *Complainant v. Foxx*, which announced for the first time the Commission's position that Title VII of the Civil Rights Act of 1964 forbids discrimination on the basis of sexual orientation. Despite no explicit protection for "sexual orientation" in the statute itself, the EEOC read such a protection into the law's existing prohibition on discrimination based on "sex," reasoning that "sexual orientation is inherently a 'sex-based consideration.'" The decision was heralded as a great step forward in the movement to promote equality in the workplace.

A recent Missouri case, however, provides a stark reminder of the limited precedential value of the EEOC's decision and the reality that employees still find no explicit protection in the law from sexual orientation-based employment discrimination in [twenty-eight states](#), or under the federal Title VII. Plaintiff James Pittman, a gay man, alleged in a Missouri state court complaint that his employer, Cook Paper Recycling Corporation, had caused an objectively hostile and abusive workplace environment based on his sexual orientation. Mr. Pittman asserted that the company's president directed derogatory comments against him and asked him if he had AIDS, that the company did not approve of his relationship with a man, and that he was ridiculed when the relationship ended.

In an issue of first impression, the Missouri Court of Appeals took a narrow reading of the Missouri Human Rights Act and [affirmed dismissal of the case](#). Even assuming that all of Mr. Pittman's allegations of harassment are true, the Court held, discrimination against an employee based on sexual orientation is not prohibited under the state discrimination statute. The Court found that "[t]he clear meaning prohibiting discrimination based upon 'sex' under the Missouri Human Rights Act intended by the Missouri legislature concerns discrimination based upon a person's gender and has nothing to do with sexual orientation." The Court declined to interpret any broader application of the prohibition on discrimination based on "sex," and suggested that any remedy would have to be sought from the legislature, not the courts:

“If the Missouri legislature had desired to include sexual orientation in the Missouri Human Rights Act’s protections, it could have done so. No matter how compelling Pittman’s argument may be and no matter how sympathetic this court or the trial court may be to Pittman’s situation, we are bound by the state of the law as it currently exists.”

While mindful of the EEOC’s opinion under Title VII in *Complainant v. Foxx*, the Court clarified that the decision is “in no way binding on this court.” The Court also cited to a string of cases from eight of the U.S. Circuit Courts of Appeal holding that discrimination based upon sexual orientation is not cognizable under Title VII.

As this case makes clear, absent explicit amendments to state and federal laws, the majority of states offer no reliable protection from discrimination based on sexual orientation in the workplace. Efforts to amend Title VII to add “sexual orientation” as a protected class are under way in the [House](#) and [Senate](#), under the proposed Equality Act introduced this past July. Stay tuned for updates on the Act as it makes its way through Congress.