Major Companies Call for Second Circuit to Declare Discrimination Based on Sexual Orientation Unlawful under Title VII

BY JACOB TOSTI • JULY 20, 2017

On May 25, 2017, the Second Circuit Court of Appeals agreed to rehear the case of *Zarda v. Altitude Express, Inc.* to determine whether Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of sexual orientation, and invited the submission of amicus curiae ("friend of the court") briefs on the issue from interested parties. The Court's invitation was accepted: since May, more than ten amicus briefs have been filed with the Court, all in support of the (now-deceased) plaintiff, Donald Zarda, a former skydiving instructor who alleged he was wrongfully fired from his job because of his sexual orientation.

Notable among the briefs filed is the En Banc Brief of 50 Employers and Organizations as Amici Curiae in Support of Plaintiffs-Appellants. A few of these employers include Google, Microsoft, CBS, and Viacom. It is somewhat unusual for employers to request a more expansive interpretation of employment laws given the potential extra costs associated with compliance. The brief, however, forcefully asserts that prohibiting discrimination based on sexual orientation will positively affect the "bottom line" of companies, stating that the "U.S. economy could save as much as $8.9 billion by protecting and welcoming LGBT employees in the workplace."

If the Second Circuit decides that discrimination based on sexual orientation is unlawful under Title VII, it will be the first federal circuit court to do so following the Seventh Circuit's landmark decision in Hively v. Ivy Tech Community College (the subject of a recent blog post by Tim Powell). Stay tuned for updates: oral argument for *Zarda* is scheduled to occur on September 26, 2017, and this issue appears to be increasingly ripe for consideration by the Supreme Court.