

EEOC Files Lawsuits Alleging Sexual Orientation Discrimination Claims Against Private Sector Employers

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The U.S. Equal Employment Opportunity Commission (EEOC) has filed two recent Title VII lawsuits in which it alleges that various private employers engaged in sexual orientation discrimination. Although sexual orientation is not listed as a protected class under Title VII, the EEOC has asserted that sexual orientation discrimination is a form of associational discrimination "on the basis of sex," because it involves an employee being treated differently based on his or her association with a person of the same sex. The EEOC first asserted this position against an employer in *Macy v. Holder* in 2012, a case in which the Bureau of Tobacco, Firearms and Explosives withdrew an offer of employment after it was discovered that the applicant was in the process of transitioning from male to female. On March 1, 2016, the EEOC doubled-down on its position by filing lawsuits in the U.S. District Court for the Western District of Pennsylvania and the U.S. District Court for the District of Maryland. In the Pennsylvania case, the EEOC alleges that a homosexual male employee suffered harassment due to his sexual orientation, while, in the Maryland-based suit, the EEOC alleges that a supervisor harassed a gay female employee because of her sexual orientation. Despite the EEOC's position that Title VII prohibits sexual orientation discrimination, the plain language of Title VII does not include such a prohibition, and some courts, including one in the Northern District of Illinois, have rejected the proposition that Title VII prohibits sexual orientation discrimination. Nevertheless, the EEOC is pursuing this matter as part of the national priorities identified in its Strategic Enforcement Plan.

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Practice Areas

Class Actions / EEOC
Pattern and Practice

Discrimination, Retaliation
and Harassment

Private and Public Sector
Employment Litigation

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Notably, many states, including Illinois, already prohibit sexual orientation discrimination. Therefore, the outcome of these cases is likely to only impact states without such statutory prohibitions, and employers in those states need to be mindful of the expanded scope of sex discrimination under Title VII.