

## EEOC Files First Lawsuits Alleging Sexual Orientation Discrimination Under Title VII

As we have reported in the [July 29, 2015 New York Labor and Employment Law Report](#), the U.S. Equal Employment Opportunity Commission (EEOC) has previously taken the position that discrimination on the basis of “sexual orientation” is prohibited under Title VII of the Civil Rights Act of 1964. Although not explicitly listed as a protected category under Title VII, the EEOC views sexual orientation discrimination as 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 its position with respect to sexual orientation discrimination in April 2012, in *Macy v. Holder*, a case in which the Bureau of Tobacco, Firearms and Explosives withdrew an offer of employment after an applicant revealed that she was in the process of transitioning from male to female. Later that same year, the EEOC issued its [Strategic Enforcement Plan](#), in which the EEOC made “coverage of lesbian, gay, bisexual and transgender individuals under Title VII’s sex discrimination provisions” a top priority. In July 2015, the EEOC issued another [decision](#) against the Federal Aviation Administration in which it held that discrimination based on sexual orientation constituted a form of sex discrimination.

On March 1, 2016, the EEOC took its position one step further by filing [lawsuits](#) in the U.S. District Court for the Western District of Pennsylvania against Scott Medical Health Center and in the U.S. District Court for the District of Maryland against Pallet Companies, d/b/a IFCO Systems NA, alleging discrimination based on sexual orientation under Title VII.

In the suit against Scott Medical Health Center, the EEOC alleges that a gay male employee allegedly suffered harassment in the workplace due to his sexual orientation. The complaint alleges that the employee’s supervisor referred to him using anti-gay epithets and made offensive comments about his sexuality and sex life. The complaint further alleges that although the employee complained of how he was treated, his manager refused to take any corrective action, forcing him to resign from his position.

In the suit against IFCO Systems, the EEOC alleges that a supervisor harassed a gay female employee because of her sexual orientation. The complaint alleges that the employee’s supervisor made comments about the employee’s orientation and appearance, and made sexually suggestive gestures toward her. The complaint further alleges that the employee complained about the harassment but was terminated shortly after making the complaint.

In a [press release](#) announcing the two lawsuits, the EEOC stated that these two suits “solidify its commitment to ensuring that individuals are not discriminated against in the workplace because of their sexual orientation.”

Despite the EEOC’s continued assertions that Title VII encompasses sexual orientation as a protected category, there is no dispute that the plain language of Title VII does not expressly prohibit discrimination on the basis of sexual orientation. Of course, employees in New York are nevertheless protected against discrimination based on sexual orientation, because the New York Human Rights Law already includes such protection. If defense counsel challenges the EEOC’s interpretation, the federal district courts will have the opportunity to establish a precedent regarding whether this protection also exists under Title VII.

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