



Seventh Circuit Rules That Title VII Covers Discrimination Based on Sexual Orientation

On April 4, 2017, the Seventh Circuit became the first federal appellate court to rule that discrimination of an employee based on sexual orientation is illegal under Title VII of the Civil Rights Acts of 1964.

In *Hively v. Ivy Tech Community College of Indiana*, Hively, a former employee and part-time adjunct professor of Ivy Tech, claimed that she was denied promotion and full-time employment on at least six different occasions, and that she was eventually terminated, because she is a lesbian. Hively argued that Ivy Tech's alleged discriminatory conduct violated Title VII, which makes it unlawful to discriminate on the basis of a person's "race, color, religion, sex, or national origin." 42 U.S.C. §2000e-2(a). In response, Ivy Tech argued that sexual orientation is not a protected class under Title VII and that Hively's lawsuit should be dismissed.

Based on years of legal precedent in support of Ivy Tech's position, the lower court agreed with Ivy Tech and dismissed Hively's case. Hively appealed to the federal court of appeals for the Seventh Circuit.

In a landmark ruling, the Seventh Circuit held that discrimination on the basis of sexual orientation is a form of sex discrimination protected by Title VII. This ruling is the first of its kind from any federal appellate court and

was made *en banc* after the initial panel of judges on the Seventh Circuit rejected Hively's claim.

In so holding, the court reasoned that actions taken on the basis of sexual orientation are a subset of actions taken on the basis of sex. Here, Hively argued that if she were a man married or living with a woman and everything else stayed the same, Ivy Tech would not have refused to promote her and it would not have fired her. The court found that, based on these allegations (which were taken as true at this stage of the litigation), Ivy Tech disadvantaged Hively because she is a woman.

The court stated that "[a]ny discomfort, disapproval, or job decision based on the fact that the complainant - woman or man - dresses differently, speaks differently, or dates or marries a same-sex partner, is a reaction purely and simply based on sex. That means that it falls within Title VII's prohibition against sex discrimination . . ."

Despite this broad statement, the court's holding is not without limitations. As the court noted, its holding does not necessarily apply outside the employment context, such as in social or public services. And the court suggested that religious institutions may be permitted to discriminate on the basis of sexual orientation.

What Employers Should Know

In light of this landmark decision, employers within the Seventh Circuit (Illinois, Indiana and Wisconsin) may be liable for violation of Title VII if they discriminate against an employee on the basis of his or her sexual orientation. Employers should immediately advise their Human Resources personnel, among others, of this important ruling.

While this ruling is not necessarily binding on employers located outside of the Seventh Circuit, we suspect that this holding could shape similar holdings in courts located across

the country. Employers are cautioned to keep abreast of new developments in their jurisdiction.

If you have any questions about this Alert, or if you would like to review this ruling and its implications further, please contact the author listed below or the Aronberg Goldgehn attorney with whom you normally consult.

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