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The Workplace Intelligence Firm

Recent Events Surrounding Sexual Orientation Discrimination In the Workplace Serve As A Compelling Reminder To Employers to Be Proactive

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The issue of sexual orientation discrimination in the workplace was put in the spotlight recently when it was reported that a National Football League (NFL) football team asked a former college running back about his sexual orientation at the NFL's Annual Scouting Combine held in Indianapolis, Indiana. A spokesperson for the NFL stated that the question about the player's sexual orientation was contrary to NFL workplace policies.

This comes on the heels of the February 26, 2018, decision of the Second Circuit Court of Appeals in the case of ***Zarda v. Altitude Express, Inc***., wherein the Second Circuit held that sexual orientation discrimination is a form of sex discrimination prohibited under Title VII of the Civil Rights Act of 1964. The Second Circuit found that "sexual orientation discrimination is a subset of sex discrimination because sexual orientation is defined by one's sex in relation to the sex of those to whom one is attracted, making it impossible for an employer to discriminate on the basis of sexual orientation without taking sex into account."

The decision in *Zarda* is in line with the position of the Equal Employment Opportunity Commission and the April 2017 decision by the Seventh Circuit Court of Appeals in ***Hively v. Ivy Tech Community College of Indiana***, where the Seventh Circuit also held that discrimination in the workplace based upon sexual orientation violated Title VII. These rulings reflect expanded coverage of federal law to include the protection of sexual

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orientation.

This recent focus on sexual orientation discrimination in the workplace serves as a good reminder that employers should make sure that their anti-discrimination policies clearly prohibit sexual orientation discrimination, that sufficient reporting procedures are in place, and that employees are regularly trained on these policies and procedures.