

EEOC Enters Historic First Settlement in Sexual Orientation Case

Labor & Employment Law Update

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Back on our March 8, 2016 blog, we reported about two new lawsuits filed by the EEOC based on sexual orientation. On June 28, 2016, the EEOC reached a historic first settlement on one of these lawsuits. In the case against Pallet Companies, doing business as IFCO Systems North America, the EEOC alleged that the company discriminated against a woman by terminating her for complaining about harassment associated with her sexual orientation.

Yolanda Boone, a forklift driver at IFCO's Baltimore plant, complained that her supervisor harassed her by repeatedly making comments about her sexual orientation. This included comments such as "I want to turn you back into a woman," "I want you to like men again" and "you would look good in a dress." Despite Boone's complaints to management, the harassment continued. Following additional complaints to the general manager and HR, Boone was purportedly terminated.

While the Civil Rights Act of 1964 prohibits employers from discriminating against employees on the basis of sex, race, color, national origin and religion, it does not explicitly include sexual orientation as a basis. Nevertheless, the EEOC maintains that harassment based on sexual orientation is covered under the prohibition against discrimination based on sex. To date, no federal appeals court has issued a ruling adopting the EEOC's approach to sexual discrimination claims involving sexual orientation. However, cases are pending in the 2nd, 7th and 11th Circuits.

The settlement award includes \$7,200 in back pay, \$175,000 in damages to Boone, and \$20,000 to the Human Rights Campaign, an LGBTQ advocacy group. As part of the settlement, IFCO will also retain an expert to develop workplace training addressing sexual orientation, gender identity and transgender issues in the workplace.

In light of the terms of the settlement, and as we suggested in our earlier blog, employers nation-wide should review and revise their EEO policies to ensure conformance with the EEOC's enforcement strategy, even if their state does not already protect sexual orientation.

Employers should also ensure that management and supervisory employees are trained to identify potential instances of discrimination and harassment based on sexual orientation, and how to address employee complaints relating to sexual orientation as the failure to do so could have severe legal and financial consequences.

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