

New EEOC Lawsuits Are A Reminder To Ensure Anti-Discrimination Policies Apply To Sexual Orientation

Labor & Employment Law Update

on March 8, 2016

On March 1, 2016, the EEOC announced that it had filed its first two sex discrimination lawsuits based on sexual orientation. One of these cases, filed in the federal district court for the Western District of Pennsylvania, is based on allegations that a gay male employee was subject to anti-gay epithets and other offensive comments about his sexuality and sex life that eventually drove the employee to resign. The other case, filed in the District of Maryland, Baltimore Division, is based on allegations that a lesbian employee's supervisor made comments regarding the employee's appearance and sexual orientation, and that she was fired shortly after complaining to her employer.

Both of these lawsuits were brought under Title VII of the Civil Rights Act of 1964, on the theory that Title VII's prohibition of sex discrimination encompasses sexual orientation. While the issue of whether Title VII can be enforced so broadly may still be subject to scrutiny and challenge, the EEOC has made it clear that it intends to use Title VII for sexual orientation claims—which means employers should expect to encounter more and more federal law claims based on sexual orientation discrimination and harassment.

With that in mind, we urge employers in states that do not have state-law anti-discrimination protections for sexual orientation to review and reassess their anti-discrimination policies and procedures—including all internal complaint mechanisms—to ensure they contain adequate protections against sexual orientation discrimination and harassment. In this regard, it is critically important that all management and supervisory employees are trained to identify potential instances of discrimination and harassment based on sexual orientation, and to address employee complaints relating to sexual orientation.

Employers in states that already have sexual orientation discrimination protections should also take note of this EEOC litigation as it has the potential to increase employer exposure to legal liability. For example, in Illinois, the time limit for filing a state law-based sexual orientation discrimination charge is 180 days. But because the deadline for filing an EEOC discrimination charge for alleged federal law violations is 300 days, the EEOC's current enforcement

strategy for sexual orientation claims extends the period during which employers could face such claims (albeit under federal law). Moreover, staying with the Illinois example, unlike the Illinois Human Rights Act (which contains the Illinois State law prohibition on sexual orientation discrimination), Title VII allows for punitive damages—which drastically increases the potential financial liability employers may face.

The bottom line is that employers nation-wide must update their policies, procedures, and day-to-day practices to conform with the EEOC's current litigation and enforcement strategy as the failure to do so could have severe legal and financial consequences.

New EEOC
Lawsuits
Are A
Reminder
To Ensure
Anti-
Discrimination
Policies
Apply To
Sexual Ori-
entation