



# A Dealership's Guide To Sexual Orientation Discrimination In The Workplace

Insights

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Following the landmark 2015 Supreme Court decision making same-sex marriage legal across the country, federal courts have grappled with determining which types of claims are actionable under the “sex” provision of Title VII, the primary federal antidiscrimination statute. In the past several months, both the 2nd Circuit Court of Appeals (which has federal jurisdiction over Connecticut, New York, and Vermont) and the 11th Circuit Court of Appeals (Alabama, Florida, and Georgia) have refused to extend Title VII’s protections to claims of discrimination on the basis of sexual orientation.

However, in early April, the 7th Circuit Court of Appeals (Illinois, Indiana, and Wisconsin) became the first federal court of appeals in the nation to rule that sexual orientation claims are actionable under Title VII. This development opens the door for LGBT plaintiffs to use Title VII to seek relief for allegations of employment discrimination and retaliation. What will this groundbreaking decision mean for your dealership?

## What The Law Says

While the 7th Circuit’s ruling has received considerable publicity, it will not change the day-to-day practices of most dealerships. Almost half of the states in the country prohibit sexual orientation discrimination: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Washington, and Wisconsin.

Moreover, plaintiffs have successfully argued to various federal courts that Title VII sex discrimination covers claims alleging mistreatment based on gender non-conformity actions. This includes situations where employers have discriminated against workers for failing to live up to stereotypical gender norms. Courts have noted that drawing a line separating these “sex-stereotyping” claims from pure sexual orientation claims is “exceptionally difficult” because the distinction is often “elusive.” This means you could face a viable Title VII claim akin to sexual orientation discrimination despite the opinion of your federal appeals court.

## What Best Practices Dictate

Aside from any legal considerations, many dealers have realized that promoting a workplace free from any inappropriate, offensive, or unprofessional conduct is critical to remaining competitive in the industry. As dealerships struggle to recruit millennials and retain skilled technicians, they have

discovered that a collegial and respectful atmosphere is key. Employees are no longer permitted to engage in boorish behavior where “boys can be boys.” Rather, there is an expectation that all companies, including automobile dealerships, maintain and enforce a no-harassment policy that includes protections for LGBT individuals

You should therefore update your EEO and no-harassment policies, train managers how to quickly identify and correct harassment of all types, and educate employees on your policies. If you wish to remain competitive, you must actually eliminate the “talk in the shop,” and not simply try to avoid being caught for it.

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