



## **Sexual Orientation Discrimination Claims Under TITLE VII Won't Be Dismissed...in the U.S. District Court for the Western District of Pennsylvania**

Insights

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The EEOC is on a mission to expand the scope of Title VII to prohibit employers from discriminating against employees on the basis of sexual orientation, and that mission has been accomplished (for now) in the United States District Court for the Western District of Pennsylvania. Writing for the Court on Friday, November 4, 2016, Judge Cathy Bissoon denied an employer's Motion to Dismiss a former employee's claim for sexual orientation discrimination under Title VII and effectively expanded the scope of Title VII to an area not before covered by Federal Courts within the Commonwealth of Pennsylvania. See U.S. Equal Employment Opportunity Commission v. Scott Medical Health Center, P.C., Case No. 16-CV-225 (W.D. Pa. Nov. 7, 2016) (J. Bissoon) ("Because this Court concludes that discrimination on the basis of sexual orientation is a subset of sexual stereotyping and thus covered by Title VII's prohibitions on discrimination 'because of sex,' Defendant's Motion to Dismiss on the ground that the EEOC's Complaint fails to state a claim for which relief can be granted will be denied.").

### **How did the Court reach its conclusion?**

As an initial matter, it should be noted that several Federal District Courts throughout the country have already expanded the scope of Title VII to cover sexual orientation discrimination claims. The decision in Scott Medical Health Center, however, is the first of its kind for a Federal District Court sitting in Pennsylvania. On Friday, the Court held that Title VII's "because of sex" provision prohibits discrimination on the basis of sexual orientation and stated that "[t]he Court sees no meaningful difference between sexual orientation discrimination and discrimination 'because of sex.'" Opinion at pp. 8. As the foundation for its decision, the Court focused on the concept of "sex stereotyping" and cited prior cases in which female employees were discriminated against for not conforming to female stereotypes (i.e. a woman cannot be aggressive, a woman cannot be "macho," a woman must talk and dress in a "feminine" manner) Id. at pp. 9-10. The Court relied heavily on Price Waterhouse v. Hopkins, 490 U.S. 228, 235 (1989), a case wherein the United States Supreme Court found discrimination was present where a female plaintiff "did not conform to the [defendant's] expectations of what a woman should be." Id. at p. 10. With "sex stereotyping" as the underpinning for its ruling, the Scott Medical Health Center Court found that "[t]here is no more obvious form of sex stereotyping than making a determination that a person should conform to heterosexuality." Id. "Indeed, the Court finds discrimination on the basis of sexual orientation is, at its very core, sex stereotyping plain and simple; there is no line separating the two." Id. at p. 11.

In support of its Motion to Dismiss, defendant Scott Medical Health Center relied on Bibby v. Philadelphia Coca-Cola Bottling, Co., 260 F.3d 257 (3d Cir. 2001). In Bibby, the 3rd Circuit Court of Appeals held that “Title VII does not prohibit discrimination on the basis of sexual orientation.” 260 F.3d at 261. The Scott Medical Health Center Court opined around the Bibby hurdle, by stating several reasons why Bibby would not be followed, including: (1) the Bibby plaintiff did not frame his arguments around the relationship between sexual orientation discrimination and sex stereotyping; (2) much of the Title VII precedent relied on by the 3rd Circuit Court of Appeals in Bibby either predated Price Waterhouse or contained sparse analysis on the scope of Title VII’s coverage; and (3) since the publication of Bibby, several Federal District Courts throughout the country have found that Title VII prohibits discrimination based on sexual orientation. Opinion at pp. 10-12.

In reaching its conclusion, the Court also noted that “[t]he Supreme Court’s recent opinion legalizing gay marriage demonstrates a growing recognition of the illegality of discrimination on the basis of sexual orientation.” Id. at p. 13.

### **How does this case fit into the big picture moving forward?**

This ruling marks another victory for the EEOC in its quest to expand the scope of Title VII as broadly as possible. With more and more similar rulings being issued by courts across the country, employers can expect to receive more EEOC Charges of Discrimination that include claims for sexual orientation discrimination under Title VII. If they have not done so already, employers would be wise to revisit their handbooks and training materials to ensure that their anti-discrimination and anti-harassment policies include reference to sexual orientation, as well as to ensure that their employees are aware that behavior based on sexual orientation could be actionable, and, therefore, must be reported and addressed.

For attorneys with a federal practice in Pennsylvania, it is important to note that Bibby has not been overturned and that it remains precedential in Federal District Courts within the 3rd Circuit. Scott Medical Health Center, however, has given aggrieved plaintiffs a new leg on which to stand, and, could signal an impending change in the 3rd Circuit when it comes to Title VII protections for sexual orientation.

### ***Related People***





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