



EEOC Earns First-Ever Title VII Court Win In LGBT Discrimination Case

3 THINGS EMPLOYERS NEED TO KNOW ABOUT LANDMARK LGBT RULING

Insights

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The federal watchdog agency that oversees federal antidiscrimination law just scored a milestone victory when a judge awarded \$55,500 to a telemarketer who alleged to have been forced off the job because of sexual orientation discrimination. The November 16 decision brings to an end one of the first cases brought by the Equal Employment Opportunity Commission (EEOC) on the theory that Title VII – the federal law prohibiting job discrimination based on “sex” and other protected classes – also prohibits LGBT bias. It also marks the first time that a lawsuit brought by the EEOC on this theory has led to a successful judgment, and should serve as an eye-opener for employers across the country.

Here are three things that every employer should know about this decision.

- **The Judge Would Have Awarded More Money If The Law Allowed**

Dale Massaro worked as a telemarketer for Scott Medical Health Center in Pittsburgh for barely a month before, according to the court’s findings of fact, he was forced off the job due to anti-gay harassment. Almost immediately after he started in late July 2013, his direct supervisor began harassing him due to his LGBT status through derogatory comments, gay slurs, and intrusive questions about his personal life and relationships.

Massaro reported the harassment to the owner and CEO, Gary Hieronimus, but his report was met with resistance. According to the court’s findings of fact, the owner refused to take action and informed Massaro that the supervisor “was just doing his job.” The harassment continued, and Massaro felt he had no choice but to quit his job to escape the mistreatment. After his August 2013 departure, the EEOC took up the case on his behalf and attempted to resolve the matter. After those attempts were unsuccessful, the agency filed suit alleging a Title VII violation. The EEOC filed the lawsuit on the same day it also brought another LGBT discrimination claim against a separate employer, marking the first time the agency attempted to enforce Title VII so as to cover anti-gay workplace discrimination. While that other case resolved several months later, Massaro’s case continued through the federal court system.

After the employer failed to offer a proper defense, the court granted a default judgment in Massaro's favor and held a hearing to determine the amount of damages to award. Judge Cathy Bissoon was prepared to award compensatory damages for emotional pain, suffering, and mental anguish in excess of \$50,000, and an additional \$75,000 in punitive damages to punish the employer and deter future similar conduct. However, Title VII's statutory limit for these types of damages for an employer of Scott Medical's size (fewer than 101 employees) prevented Judge Bissoon from awarding more than \$50,000. She also granted Massarro \$5,500 in back pay for a total award of \$55,500. The message, though, loud and clear from the judge, was that she wished she could have awarded more money to Massaro because of Scott Medical's conduct.

- **An Unenforced Policy And Lack Of Training Were The Employer's Undoing**

Although the conduct alleged in this case is shocking, some of the more surprising elements include the manner in which Scott Medical handled its human resources responsibilities. According to the court's findings of fact, the employer had a comprehensive employee handbook that contained a thorough anti-harassment policy, including a specific mention prohibiting harassment based on sexual orientation. However, Massaro was not permitted to read or obtain a copy of the policy, which made the contents all but worthless. And, of course, as evidenced by the findings discussed above, this portion of the policy was not enforced due to the owner turning a blind eye toward Massaro's allegations.

Moreover, the employer never offered training to its workforce about the anti-harassment and anti-discrimination elements of the policy. The owner admitted that he did not train the offending supervisor on the policy, and he could not identify anyone else who would have provided such training.

This case presents a stark example of a very simple concept: your policies are only worthwhile if you disseminate them, train your supervisors on them, and enforce them.

- **Courts Are Still Split On The Issue, But The Tide Appears To Be Turning**

The state of the law is in flux when it comes to the question of whether Title VII covers claims of LGBT discrimination. For years, none of the federal appellate courts would step out on a limb and conclude that the federal antidiscrimination statute should be read that broadly. That changed in April 2017 when the 7th Circuit became the first federal court of appeals in the nation to rule that sexual orientation claims are actionable under Title VII in the *Hively v. Ivy Tech Community College* case. Shortly before that decision, however, the 11th Circuit Court of Appeals refused to extend Title VII's protections to cover LGBT discrimination in March's *Evans v. Georgia Regional Hospital* case.

That sets up a clear circuit split, and invites the Supreme Court to wade into the conflict to resolve the matter once and for all. The justices are currently considering whether to accept the *Evans* case for review, and it is possible that they could take up the matter this term and issue a final ruling by June 2018. Until then, however, employers should be sure to follow state laws (which may permit

June 2018. Until then, however, employers should be sure to follow state laws (which may permit LGBT discrimination and harassment claims), be aware of federal courts that may be willing to follow the 7th Circuit's example, and be wary of the EEOC. There are many avenues for employees to bring sexual orientation discrimination claims, which highlights the need for strong zero-tolerance policies, consistent enforcement of those policies, and comprehensive training to all of your managers.

For more information about how this case could affect your workplace, please contact your regular Fisher Phillips attorney.

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