

Labor & Employment Law Alert: United States Supreme Court to Settle whether Title VII Prohibits Employment Discrimination against LGBT Workers

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination because of “sex.” For decades, federal courts did not view sex discrimination under Title VII as including discrimination based on sexual orientation or gender identity. In recent years, a split has developed among the U.S. Courts of Appeals with, for example, the Second Circuit (which includes New York) and the Seventh Circuit finding that sexual orientation should be viewed as a form of unlawful sex discrimination under Title VII, and the Fifth and Eleventh Circuits saying “not so.” This past March, the Sixth Circuit became the first federal appeals court to hold that Title VII also prohibits employment discrimination based on gender identity or transgender status.

On April 22, 2019, the U.S. Supreme Court announced that it will take up a trio of cases to determine the scope of sex discrimination bias protections under Title VII and to resolve the developing split of authority in the federal courts. Perhaps not surprisingly, the federal Equal Employment Opportunity Commission (EEOC) and the United States Department of Justice (DOJ) have taken opposite sides on these issues in recent years. Furthermore, there is a piece of proposed federal legislation in Congress known as the Equality Act which would amend Title VII to expressly include sexual orientation and gender identity as protected characteristics under Title VII. Advocacy groups have taken a keen interest in these developments.

New York employers should know that the New York State Human Rights Law (HRL) already prohibits employment discrimination by New York employers on the basis of an employee’s or applicant’s sexual orientation or gender identity. A ruling by the U.S. Supreme Court that Title VII also protects LGBT workers would afford New York employees additional protections and remedies under federal law, and may also have broader civil rights implications in other settings such as school districts, colleges and universities.

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