

Breaking News

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Federal Court of Appeals Protects Employees from Discrimination Based on Sexual Orientation

By Jon Vegosen

In a landmark decision, the U.S. Circuit Court of Appeals for the Seventh Circuit (Illinois, Wisconsin and Indiana) held that Title VII protects employees from discrimination based on sexual orientation. The Seventh Circuit's decision in *Hively v. Ivy Tech Community College of Indiana*, (7th Cir. 4/4/2017) (en banc) made it the first federal court of appeals since the enactment of Title VII in 1964 to rule that Title VII protects an employee from discrimination based on sexual orientation.

In discussing its rationale, the court explained that its decision is consistent with other developments that protect gay and lesbian individuals from discrimination. For example, the court noted that the Equal Employment Opportunity Commission [announced](#) in 2015 that it takes the position that Title VII's prohibition against sex discrimination includes discrimination based on sexual orientation. The court also discussed how its decision aligns with the U.S. Supreme Court's recent protection of gay marriage rights in *Obergefell v. Hodges*. The *Hively* court said that to deny an employee's discrimination claim based on sexual orientation would "create a paradoxical legal landscape in which a person can be married [to someone of the same sex] on Saturday and then fired on Monday for just that act."

To date, most courts have dismissed Title VII discrimination claims based on the plaintiff's sexual orientation. This groundbreaking decision gives employees in the Seventh Circuit protection against, and the ability to sue for, discriminatory employment practices based on their sexual orientation. Previously, such claims were likely to be dismissed at an early stage of litigation.

What Should Employers Do?

Employers covered by Title VII in the Seventh Circuit should make sure that their policies (including employee handbooks) and practices are consistent with *Hively* and that they do not discriminate based on sexual orientation. Employers should also train managers about the decision. Although the decision is only binding on employers in the Seventh Circuit, employers elsewhere should take note as the case could well inspire change. Illinois employers covered by the Illinois Human Rights Act should bear in mind that, per an amendment in 2006, employment discrimination based on sexual orientation is unlawful in Illinois. Finally, all eyes should be on the U.S. Supreme Court to see if, and when, it decides whether Title VII protects employees from discrimination based on sexual orientation.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen 312.701.6860 jvegosen@fvldlaw.com or your regular FVLD contact. Many thanks to Paul King, FVLD's newest associate, pending admission to the Illinois Bar, for his work on this newsletter.

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