What You Should Know About EEOC and the Enforcement Protections for LGBT Workers

Recent activities by EEOC, including the filing of lawsuits on behalf of transgender employees, the filing of amicus briefs related to coverage of sexual orientation and transgender status, and the issuance of federal sector decisions in these areas, have triggered increased interest about protections for lesbian, gay, bisexual and transgender (LGBT) individuals under federal employment-discrimination laws. The information below highlights what you should know about the EEOC’s enforcement efforts on behalf of LGBT individuals.

Overview

The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. These federal laws also prohibit employers from retaliating against workers who oppose discriminatory employment practices - for example, by reporting incidents of sexual harassment to their supervisor or human resources department - or against those who file EEOC charges or cooperate with an EEOC investigation. Where these federal laws apply, they protect all workers, regardless of sexual orientation or gender identity.

Employers and employees often have questions about whether discrimination related to LGBT status is prohibited under the laws the EEOC enforces. While Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation or gender identity in its list of protected bases, the Commission, consistent with case law from the Supreme Court and other courts, interprets the statute’s sex discrimination provision as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.

The Commission’s Strategic Enforcement Plan (SEP), adopted by a bipartisan vote in December of 2012, lists "coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply" as an enforcement priority for FY2013-2016. This enforcement priority is consistent with positions the Commission has taken in recent years regarding the intersection of LGBT-related discrimination and Title VII’s prohibition on sex discrimination.

In 2012, the EEOC held that discrimination against an individual because that person is transgender (also known as gender identity discrimination) is discrimination because of sex and therefore is prohibited under Title VII. See *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012). The Commission has also held that discrimination against an individual because of that person’s sexual orientation is discrimination because of sex and therefore prohibited under Title VII. See *David Baldwin v. Dep’t of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015).

Consistent with *case law from the Supreme Court and other courts*, the Commission takes the position that discrimination against an individual because that person is transgender is a violation of Title VII’s prohibition of sex discrimination in employment. Therefore, the EEOC’s district, field, area and local offices will accept and investigate charges from individuals who believe they have been discriminated against because of transgender status (or because of gender identity or a gender transition).

The Commission also takes the position, consistent with *case law from the Supreme Court and other courts referenced at the previous link*, that discrimination against an individual because of that person’s sexual orientation is a violation of Title VII. The Commission accepts and investigates charges alleging sexual-orientation discrimination in employment.

Charge Data

In January 2013, the EEOC began tracking information on charges filed alleging discrimination related to gender identity and/or sexual orientation. In the final three quarters of FY 2013 (January through September), EEOC received 643 charges that included allegations of sex discrimination related to sexual orientation and 147 charges that included allegations of sex discrimination based on gender identity/transgender status. In FY 2014, the EEOC received 918 charges that included allegations of sex discrimination related to sexual orientation and 202 charges that included allegations of sex discrimination based on gender identity/transgender status. For the first two quarters of FY 2015, EEOC received 505 charges that included allegations of sex discrimination related to sexual orientation and 112 charges that included allegations of sex discrimination based on gender identity/transgender status.

The chart below shows charges received or resolved between January 2013 and March 31, 2015 that included an allegation of sex discrimination related to gender identity/transgender or sexual orientation:

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<th>FY2013*</th>
<th>FY2014</th>
<th>FY2015**</th>
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<tr>
<td></td>
<td>Total LGBT</td>
<td>Sex-Gender</td>
<td>Total LGBT</td>
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<td>Orientation</td>
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<tr>
<td>Total Receipts</td>
<td>765</td>
<td>147</td>
<td>643</td>
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<tr>
<td>Total Resolutions</td>
<td>337</td>
<td>74</td>
<td>272</td>
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<td>Settlements</td>
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See Also:

- Recent EEOC Litigation-Related Developments Regarding Coverage of LGBT-Related Discrimination under Title VII
- Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII
- Federal Sector Cases Involving LGBT Individuals
- *David Baldwin v. Dep’t of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015)
In the Federal Sector, EEOC has been implementing the SEP priority with regard to the coverage of LGBT individuals in a variety of ways:

**Federal-Sector Enforcement**

*Discussion of the Commission's lawsuits, amicus briefs and conciliations is available here*

Additionally, the Commission has filed several amicus briefs and successfully conciliated charges involving these issues. A more detailed discussion of the Commission's lawsuits, amicus briefs and conciliations is available here.

**Litigation Activity**

The Commission has begun to file LGBT-related lawsuits under Title VII challenging alleged sex discrimination.

- EEOC v. Lakeland Eye Clinic, P.A. (M.D. Fla. Civ. No. 8:14-cv-2421-T35 AEP filed Sept. 25, 2014). The EEOC sued Lakeland Eye Clinic, a Florida-based organization of health care professionals, alleging that it discriminated based on sex in violation of Title VII by firing an employee because she is transgender, because she was transitioning from male to female, and/or because she did not conform to the employer's gender-based expectations, preferences, or stereotypes. The EEOC's lawsuit alleged the employee performed her duties satisfactorily throughout her employment. However, after she began to present as a woman and informed the clinic she was transgender, Lakeland fired her. On April 9, 2015, the U.S. District Court in Tampa approved an agreement in which Lakeland Eye Clinic will pay $150,000 to settle the lawsuit. Lakeland also agreed to implement a new gender discrimination policy and to provide training to its management and employees regarding transgender/gender stereotype discrimination.

- EEOC v. R.G. & G.R. Harris Funeral Homes Inc. (E.D. Mich. Civ. No. 2:14-cv-13710-SFC-DRG filed Sept. 25, 2014). The EEOC sued Detroit-based R.G. & G.R. Harris Funeral Homes Inc., alleging that it discriminated based on sex in violation of Title VII by firing a Garden City, Mich., funeral director/embalmer because she is transgender, because she was transitioning from male to female, and/or because she did not conform to the employer's gender-based expectations, preferences, or stereotypes. The lawsuit alleges that an individual had been employed by Harris as a funeral Director/Embalmer since October 2007 and had always adequately performed the duties of that position. In 2013, the worker gave Harris a letter explaining she was undergoing a gender transition from male to female, and would soon start to present (e.g., dress) in appropriate business attire at work, consistent with her gender identity as a woman. Two weeks later, Harris's owner fired the transgender employee, telling her that what she was "proposing to do" was unacceptable.

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**Federal-Sector Enforcement**

In the Federal Sector, EEOC has been implementing the SEP priority with regard to the coverage of LGBT individuals in a variety of ways:

- Tracking gender identity and sexual orientation appeals in the federal sector.
- Issuing federal sector decisions finding that gender identity-related complaints and sexual orientation discrimination-related complaints can be brought under Title VII through the federal sector EEO complaint process.
- Establishing an LGBT workgroup to further the EEOC's adjudicatory and oversight responsibilities, with the goal of issuing an LGBT federal...
sector report.

- Issuing guidance, including instructions for processing complaints of discrimination by LGBT federal employees and applicants available on EEOC’s public website.
- Providing technical assistance to federal agencies in the development of gender transition policies and plans.
- Providing LGBT-related outreach to federal agencies through briefings, presentations, and case law updates.

Training and Outreach

Finally, EEOC staff are addressing LGBT legal developments in numerous outreach and training presentations to the public. During FY 2014 and the first two quarters of FY 2015, field office staff conducted more than 900 events where LGBT sex-discrimination issues were among the topics discussed. In the federal sector during FY 2014, 21 presentations were delivered to different agencies or audiences. In FY 2015, 7 presentations have been delivered with at least 7 more currently scheduled. These events reached a wide variety of audiences, including employee advocacy groups, small employer groups, students and staff at colleges and universities, staff and managers at federal agencies and human resource professionals. To assist in this outreach the EEOC developed a brochure, Gender Stereotyping: Preventing Employment Discrimination of Lesbian, Gay, Bisexual or Transgender Employees.