

CLIENT ALERTS

For the First Time, EEOC Sues Private Employers for “Sex Discrimination” Based on Sexual Orientation

3.4.2016

On March 1, 2016, the Equal Employment Opportunity Commission (EEOC) filed two lawsuits against Baltimore and Pittsburgh based companies claiming those employers discriminated against employees based on sexual orientation. This marks the first time that the EEOC has sued a private employer under the theory that “sexual orientation” discrimination is a form of “sex discrimination.” This lawsuit forms a part of the EEOC’s continuing effort to seek judicial recognition for its argument that sexual orientation discrimination is unlawful under Title VII of the Civil Rights Act of 1964.

Under the plain language of Title VII only “sex” discrimination is considered illegal. So far, however, the Sixth Circuit Court of Appeals, where Michigan resides, has consistently ruled that “sexual orientation is not a prohibited basis for discriminatory acts under Title VII” and that a plaintiff cannot “bootstrap protection for sexual orientation into Title VII.” The new EEOC lawsuits were filed in district courts in the Third and Fourth federal circuits in the Northeast. If the EEOC is successful on its lawsuits, it could take some time before the existing precedent changes in the Sixth Circuit.

Employers, however, should be aware that the EEOC continues to accept charges of discrimination relating to sexual orientation in all jurisdictions. Furthermore, numerous counties and municipalities have local rules that prohibit discrimination based on sexual orientation. Given that this area of law remains in flux, employers should consider contacting counsel regarding any questions or policy updates.

If you have any questions about wage and hour issues, please contact the author of this bulletin or your Butzel Long attorney.

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