

## EMPLOYMENT SERVICES ALERT

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### Federal Appeals Court Rules Civil Rights Act Protects LGBT Employees

By ***Nathan Pangrace***, Associate

A federal appeals court ruled on Tuesday that Title VII of the Civil Rights Act of 1964 prohibits job discrimination against gay, lesbian, bisexual, and transgender employees. The decision, by the United States Court of Appeals for the Seventh Circuit, is the highest federal court thus far to grant employees protection based on their sexual orientation and transgender status.

The case arose from a suit filed by an Indiana teacher who alleged a community college repeatedly passed her over for promotions and eventually fired her because she is a lesbian. The lower court ruled that federal law did not afford her protection and dismissed her case. But the Seventh Circuit reversed the decision, holding by an 8-to-3 vote that Title VII – which already prohibits discrimination based upon race, color, religion, sex, and national origin – also forbids discrimination based on sexual orientation.

“It is actually impossible to discriminate on the basis of sexual orientation without discriminating on the basis of sex,” wrote Chief Judge Diane Wood in the majority opinion. “It would require considerable calisthenics to remove the ‘sex’ from ‘sexual orientation.’”

In her dissenting opinion, Judge Diane Sykes accused the court of “an aggressive reading of loosely related Supreme Court precedents in order to bypass the legislative process.” She argued federal law does not provide a remedy for job discrimination because of sexual orientation, but this issue must be addressed by Congress.

The decision is an important step forward in the effort to protect the LGBT community from employment discrimination. LGBT advocates point to the odd situation that, although gays can legally marry following the Supreme Court’s decision *Obergefell v. Hodges*, they can still be fired for having a same-sex partner in most states.

The Seventh Circuit has jurisdiction only over Illinois, Indiana, and Wisconsin. Its ruling conflicts with other federal appellate courts, which have interpreted Title VII more narrowly and found that sexual orientation is not a protected class. Thus, this circuit split will likely lead to a showdown before the Supreme Court. Given the clear trend towards expanding workplace protections to LGBT employees, all employers would be wise to revisit their equal employment opportunity policies. Many states and local jurisdictions also have laws that explicitly protect people from discrimination based on sexual orientation or gender identity.

For additional information on the Seventh Circuit’s decision and assistance reviewing your policies, please contact one of the listed Roetzel attorneys.

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