Civil Rights Act Protects LGBT College Employee from Workplace Discrimination

Ivy Tech Community College violated the Civil Rights Act when it denied the adjunct instructor full-time employment based on her sexual orientation.

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APRIL 24, 2017

Today, the state of workplace discrimination regarding LGBT is split. It is new and uncertain for Supreme Court review, but it is also not smart from a risk assessment point of view for employers to permit such discrimination, regardless of the uncertainty.

Recently, a federal appeals court ruled that the Civil Rights Act protects LGBT employees from workplace discrimination. The panel of 7th US Circuit Court of Appeals heard the case, stating that Adjunct Instructor Kimberly Hively's 2014 lawsuit against Ivy Tech Community College could proceed. She argued that the school violated Title VII of the Civil Rights Act of 1964 when it denied her full-time employment based on her sexual orientation.

Jay Holland, principal with Joseph Greenwald & Laake, sat down with Inside Counsel to discuss how the recent case brought about positive change to the LGBT community. Holland is also chair of the firm's Labor, Employment, and Qui Tam Whistleblower practice.

The college violated Title VII of the Civil Rights Act of 1964 when it denied the adjunct instructor full-time employment based on her sexual orientation. According to Holland, Title VII prohibits discrimination in the terms and conditions of employment. "The courts have long recognized that the terms and conditions of employment include a refusal to hire based on being a member of a protected class. Here, that protected class would be sexual orientation - or sex," he said.

In this case, the Plaintiff Hively sued her employer for denying her full-time employment as a professor based on her sexual orientation. She claimed she qualified for a full-time position, and the reason she did not get the position was because she is openly gay. A three-judge panel of the 7th Circuit Court of Appeals ruled in a decision that definition of "sex" in Title VII employment discrimination cases did not include "sexual orientation."

"That panel bemoaned the fact they were bound to follow prior circuit precedent on the issue and overtly hoped the case would be further reviewed," explained Holland. "That panel got its wish when the full court, en banc, decided to hear the case and in a majority decision by Judge Wood, with two concurrences – one of which was entertainingly penned by Judge Posner – the court decisively held that Title VII bars discrimination in employment based on sexual orientation."

Further, Judge Woods analyzed the wording of Title VII and the line of Supreme Court cases consistently expanding the rights of individuals based on sexual orientation to find that it is impossible to say that discrimination because of sex does not include sexual orientation. The Court refused to turn itself into a highly-twisted pretzel and concluded it had no choice but to reach this conclusion.

According to Holland, the implications of this case are immediate and could be dramatic for employers in the states covered by the Seventh Circuit. As of now, the law of the land in those states is that federal law prohibits discrimination in the workplace based on LGBT status, but that is not necessarily the case in other jurisdictions. However, it is important to know that the EEOC has taken the position in its official Guidelines for the past several years that Title VII prohibited discrimination in the workplace based on LGBT status; and many other states and localities, by state and local law, also prohibit discrimination in the workplace based on LGBT status.

"At the very least, given this case, state laws, and the EEOC Guidelines, it would be quite short-sighted for employers to rely on the fact that there is a split in the circuits and therefore they can discriminate based on sexual orientation," he said. "Most employers would rather not be the 'test case' - they rather focus on their business. That means adopting effective and inclusive anti-discrimination policies."