EEOC Decision Signals Shift In Application Of Title VII to Sexual Orientation Discrimination

July 15, 2015 • Legal Updates & Insights

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On July 15, 2015, the EEOC issued a decision in Baldwin v. Foxx, holding that allegations of sexual orientation discrimination state a claim for sex discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII"). EEOC Appeal No. 0120133080. The complainant, David Baldwin, was employed as an air traffic controller by the Federal Aviation Administration ("FAA") in Miami, Florida. Baldwin alleged that he was denied a promotion based on his sexual orientation. Baldwin's complaint further alleged that his supervisor, who was involved in the selection process for the promotion, made negative comments about Baldwin's sexual orientation.

In reaching its decision, the EEOC reasoned that Title VII's prohibition of sex discrimination means that employers may neither "rely upon sex-based considerations" nor "take gender into account" when making employment decisions. The agency further clarified that sexual orientation is inherently a "sex-based consideration." The EEOC also held that the denial of the promotion to Baldwin constituted discrimination on the basis of his association with a particular class of persons. Finally, the EEOC explained that sexual orientation discrimination and harassment are often, if not always, motivated by a desire to enforce heterosexually-defined gender norms.

The decision in Baldwin could have far-reaching ramifications. While the EEOC's decisions are not legally binding authority in state or federal courts, generally, the agency's determinations are considered persuasive and often influence court decisions. Baldwin makes clear that the EEOC considered that the correct analysis in such a case is to determine whether the employer has "relied on sex-based considerations" or "take[n] gender into account" when taking the challenged employment action.

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