

EEOC: TITLE VII PROHIBITS EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION



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The recent U.S. Supreme Court decision in *Obergefell v. Hodges* struck down restrictions on marriage by same-sex couples, but it did not address other forms of discrimination based on sexual orientation, such as in employment. The Equal Employment Opportunity Commission, however, did not wait for a ruling from the high court, instead ruling on its own that Title VII of the Civil Rights Act of 1964 prevents discrimination in an employment context on the basis of sexual orientation. This decision, *Baldwin v. Foxx*,¹ broadens Title VII protections considerably, although it remains to be seen if the high court agrees with the EEOC interpretation.

This is the first true decision from the EEOC on the application of Title VII to sexual orientation, and the agency found that prohibitions on sex discrimination under the law inherently apply to sexual orientation as well. The agency extended Title VII protection

1 *Baldwin v. Foxx*, FAA-2012-24738 (EEOC June 15, 2015).

based on sex discrimination on the grounds that sex and sexual orientation are inherently inseparable, sexual orientation discrimination is a form of impermissible associational discrimination, and sexual orientation discrimination often occurs on the basis of sex stereotypes, a prohibited form of discrimination under U.S. Supreme Court Title VII interpretation.

This is not, however, the first time the EEOC has spoken to the topic of providing Title VII protection to sexual orientation. In October of 2014, the EEOC submitted a friend-of-the-court brief with the 7th Circuit Court of Appeals in the case of *Muhammad v. Caterpillar*,² putting forth the interpretation of Title VII that it adopted in *Baldwin*. This, too, came after the agency ruled in 2012 in the case of *Macy v. Holder*,³ that Title VII prohibitions on sex discrimination applied towards transgender individuals as well. With this in mind, the official EEOC interpretation in *Baldwin* is new, but not surprising.

Though Title VII does not explicitly prohibit discrimination based on sexual orientation in its text, the EEOC interpretation will likely control for the time being, and employers should be wary about taking sexual orientation into account during the hiring process or in adverse employment decisions. Kentucky does not explicitly prohibit such discrimination directly, but Lexington, Louisville and Morehead have such ordinances, and many smaller municipalities are adopting similar prohibitions on an ongoing basis.

2 *Muhammad v. Caterpillar*, 767 F.3d 694 (7th Cir. 2014).

3 *Macy v. Holder*, No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012).

