


ELEVENTH CIRCUIT RULES TITLE VII DOES NOT PROHIBIT DISCRIMINATION BASED ON SEXUAL ORIENTATION

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Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion. On March 10, 2017, the Eleventh Circuit Court of Appeals issued its opinion in *Evans v. Georgia Regional Hospital* ruling that Title VII does not prohibit employers from discriminating against their employees on the basis of the employee's sexual orientation.

Jameka Evans, a gay woman, worked for Georgia Regional Hospital as a security officer. She voluntarily left the hospital after 14 months. While Ms. Evans did not openly broadcast her sexuality, she asserted that it was evident that she identified with the male gender because of how she presented herself – wearing a male uniform, having a male haircut, and wearing men's shoes.

Evans alleged that during her time at the hospital, she was denied equal pay or work, harassed, and physically assaulted. She further asserted that a less qualified individual was appointed to be her direct supervisor. After complaints to Human



Resources, Evans claimed she was asked about her sexuality, causing her to infer that her sexuality was the basis for her harassment. Evans also alleged that she was punished for her status as a gay

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female because she did not comport with the traditional gender stereotypes.

Evans filed a complaint with the EEOC (Equal Employment Opportunity Commission) and a subsequent lawsuit claiming that Georgia Regional Hospital violated her Title VII rights by discriminating against her on the basis of sex because of both her sexual orientation and her gender non-conformity. Both claims were dismissed by the District Court.

On appeal, the Eleventh Circuit relied on previous decisions from every other federal appeals court and held “discharge for homosexuality is not prohibited by Title VII.” Ms. Evans’s

sexual orientation claim was dismissed, but her case is not over. She was permitted to amend her gender non-conformity claim and given additional time to provide enough factual basis to plausibly suggest that her decision to present herself in a masculine manner led to the alleged adverse employment action.

Client Takeaways regarding LGBT Discrimination in Michigan

- The Eleventh Circuit Court’s ruling in this case is only binding on federal district courts in Florida, Georgia, and Alabama. However, this ruling is consistent with Sixth Circuit precedent (which covers Michigan, Ohio, Kentucky, and Tennessee). Sexual orientation is not a protected category under Title VII, but gender non-conformity is, i.e., failing to act in accordance with one’s sex or gender assigned at birth.
- It is also worth noting that state law does not prohibit discrimination on the basis of sexual orientation (or transgender status) but there may be

local ordinances prohibiting such discrimination. Local ordinances may not be enforceable.

- A Michigan federal district court has ruled that transgender or transsexual status is not protected under Title VII. *EEOC v RG & GR Harris Funeral Homes*, 100 F Supp 3d 594 (2015).
- The EEOC has made its position clear: it will not be limited by the

courts. According to the EEOC, discrimination against an individual because of sexual orientation is prohibited, as is discrimination against an individual because that person is transgender.

- The Supreme Court will have to make the final decision on sexual orientation coverage.

Case: *Evans v. Georgia Reg'l Hosp.*, No. 15-15234 (11th Cir. Mar. 10, 2017).



About the Author. Jason E. LaBelle is a member of Bodman's Workplace Practice Group. He counsels public and private sector employees on employment matters and advises management on contract negotiations and other labor issues. Prior to joining Bodman, Jason's practice focused on appellate advocacy and complex, substantive motion practice related to contract and insurance litigation in state and federal courts. He is a certified civil mediator.

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