

SEVENTH CIRCUIT RULES THAT TITLE VII COVERS SEXUAL ORIENTATION

In a Landmark Ruling, the U.S. Court of Appeals for the Seventh Circuit Holds That Title VII Covers Sexual Orientation in *Hively v. Ivy Tech Community College of Indiana*

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On April 4, 2017, the U.S. Court of Appeals for the Seventh Circuit (which covers Illinois, Indiana, and Wisconsin) became the first federal appellate court to expand the protections of Title VII of the Civil Rights Act to discrimination on the basis of sexual orientation.

Hively v. Ivy Tech Community College of Indiana involved Hively, an open lesbian, who taught at Ivy Tech part-time. Believing that she was passed over for multiple full-time positions because of her sexual orientation, Hively filed

a charge with the Equal Employment Opportunity Commission (EEOC) claiming discrimination based on sexual orientation. After being issued a right-to-sue letter from the EEOC, Hively filed suit in the district court which dismissed her claim, ruling that sexual orientation is not a protected class under Title VII.

The Seventh Circuit Court of Appeals originally affirmed the dismissal. However, the full 11-member court of appeals agreed to review the case en banc and concluded otherwise. The full court held that sexual orientation is a protected category for two reasons.

- First, there is no difference between a claim based on sexual orientation and a claim based on gender non-conformity which the United States Supreme Court recognized as a form of sex discrimination in its 1989 decision in *Price Waterhouse v. Hopkins*.
- Second, just as Title VII prohibits discrimination on the basis of the race of a person's associate, "it also prohibits discrimination on the basis of the national origin, or the color, or the religion, or (as relevant here) the sex of the associate."

This Seventh Circuit opinion is contrary to the opinion that we reported on just one week ago. (Jason E. LaBelle, *Eleventh Circuit Rules Title VII Does Not Prohibit Discrimination Based on Sexual Orientation*, BODMAN'S WORKPLACE LAW LOWDOWN, Mar. 31, 2017.) In *Evans v.*

Georgia Regional Hospital, the Eleventh Circuit held that Title VII does not prohibit employers from discriminating on the basis of

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sexual orientation. Just as with the issue of same-sex marriage, this issue will likely have to be resolved by the Supreme Court. However, published reports indicate that Ivy Tech College does not plan to appeal this decision to the Supreme Court. Rather, it plans to prove that it did not discriminate against Hively based on sexual orientation.

Case: *Hively v. Ivy Tech Community College of Indiana*, No. 15-1720 (7th Cir. Apr. 4, 2017).



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