

The Legislative Update
Jeff Devine, Legislative Chair
April 19, 2017

Some interesting Employment Law cases decided around the country.....

Federal 7th Circuit extends Anti-Discrimination Workplace Protection to Sexual Orientation in Landmark Decision

On Tuesday, April 4, 2017, the U.S. Court of Appeals for the 7th Circuit ruled in *Hively v. Ivy Tech Community College of Indiana* that employment discrimination on the basis of sexual orientation is prohibited by Title VII of the Civil Rights Act of 1964 (“Title VII”). Title VII, on its face, makes it illegal for employers to discriminate on the basis of a person’s “race, color, religion, sex, or national origin.” In 2015, the U.S. Equal Employment Opportunity Commission (the “EEOC”) asserted that Title VII also covers sexual orientation discrimination. However, none of the federal courts of appeal had adopted that position. In fact, the 7th Circuit ruled in a previous case, *Hamner v. St. Vincent Hospital & Health Care Center, Inc.*, in 2000 that Title VII did not apply to harassment based on sexual orientation. Therefore, this decision marks a stark departure from its precedent. The U.S. Supreme Court has yet to rule on this precise issue.

In overruling its own precedent, the 7th Circuit reasoned that “discrimination on the basis of sexual orientation is a form of sex discrimination,” and found that it is “actually impossible to discriminate on the basis of sexual orientation without discriminating on the basis of sex” This ruling represents a major victory for LGBTQ employees and advocates, but will likely go to the Supreme Court for review.

Employers should stay vigilant in reviewing and updating their policies, procedures and training materials, ensuring compliance with any applicable anti-discrimination laws, and monitoring new legal developments.

Whistleblowing: Employee plausibly alleged that she was terminated in retaliation for engaging in protected activity under the False Claims Act.

A district court has held that an employee plausibly alleged that she was terminated in retaliation for engaging in protected activity under the False Claims Act (FCA). Although the employee's normal job duties in her position as compliance officer involved the investigation and reporting of compliance issues, the employee alleged that she met with her employer's corporate attorney to discuss her concerns about possible improper or illegal activity. The court held that this was sufficient at the pleading stage to support a claim that she took action outside of her normal reporting channels to alert her employer about possible unlawful activity and that her employer had some notice that this was not part of her ordinary job performance. *Omwenga v. United Nations Foundation*

Optional per diem payments that drivers were expected to incur while traveling were in nature of wage, rather than reimbursements for expenses.

Optional per diem payments for meals and other incidental excludable expenses that drivers were expected to incur while traveling were in the nature of a wage, rather than reimbursements for expenses,

and therefore could be included in their “regular rate” under the FLSA and applicable Department of Labor (DOL) regulations. Although the payments were capped and were not based on hours worked, the payments were remuneration for work performed based on miles driven using a per diem mileage rate, they did not approximate actual expenses, and were for the benefit of employees. *Baouch v. Werner Enterprises, Inc.*

Employee, who suffered from gender dysphoria, sufficiently alleged denial of employment benefits based on sex in violation of Title VII.

An employee, who alleged she suffered from gender dysphoria and was denied coverage of the costs of her breast augmentation surgery solely on the basis of her male birth gender, sufficiently alleged that she was denied employment benefits based on her sex, so as to state a claim against an employer for discrimination based on sex and gender in violation of Title VII. The employee asserted that the employer engaged in intentional gender discrimination in the terms and conditions of her employment by denying her a medically necessary procedure based solely on her gender. The employee alleged that the employer's conduct constituted a deliberate and intentional violation of Title VII. Furthermore, the employee alleged that the employer's intentional and deliberate discriminatory conduct caused her to suffer loss of pay, benefits, and prestige. *Baker v. Aetna Life Insurance Co.*

Florida Legislative Update.....

Number: FL [R] HB 443 - Updated (Status 03/08/2017)

Sponsor: Rep. Joe Gruters (REP-FL)

Title: Verification of Employment Eligibility

Abstract: Requires employers to use E-Verify system to verify employment eligibility; prohibits employer from knowingly or intentionally employing unauthorized alien; requires DBPR to adopt rules; provides responsibilities & powers of department; provides procedures for filing of complaint; provides criminal penalties; requires department to establish website for specified purposes; provides rebuttable presumption of compliance with this act; provides applicability; provides for severability.

Status: H 1st Reading - 03/07/2017

Number: FL [R] HB 803 - Updated (Status 03/08/2017)

Sponsor: Rep. Don Hahnfeldt (REP-FL)

Title: Licenses to Carry Concealed Weapons or Firearms

Abstract: Removes restrictions on places where persons holding licenses to carry concealed weapons or firearms may carry.

Status: H 1st Reading - 03/07/2017

Number: FL [R] HB 945 - Updated (Status 03/08/2017)

Sponsor: Rep. Al Jacquet (DEM-FL)

Title: Minimum Wage

Abstract: Revises formula for adjusted state minimum wage.

Status: H 1st Reading - 03/07/2017

Number: FL [R] SB 410 - Updated (Status 03/09/2017)

Sponsor: Sen. Linda Stewart (DEM-FL)

Title: Employment Discrimination

Abstract: Employment Discrimination; Revising provisions prohibiting discrimination on the basis of sex to include discrimination on the basis of gender identity; prohibiting an employer from providing less favorable employment opportunities to employees based on their sex or gender identity; creating the "Helen Gordon Davis Fair Pay Protection Act", etc.

Status: Introduced -SJ 67 - 03/07/2017

Number: FL [R] SB 636 - Updated (Status 03/09/2017)

Sponsor: Sen. Jeff Clemens (DEM-FL)

Title: Income Inequality

Abstract: Income Inequality; Citing this act as the "Income Inequality Study Act"; requiring the Office of Program Policy Analysis and Government Accountability to conduct a study to identify the legislative actions and funding necessary to achieve specified goals, etc.

Status: Introduced -SJ 83 - 03/07/2017

Number: FL [R] SB 666 - Updated (Status 03/09/2017)

Sponsor: Sen. Jeff Clemens (DEM-FL)

Title: Prohibited Discrimination

Abstract: Prohibited Discrimination; Citing this act as the "Florida Competitive Workforce Act" adding sexual orientation and gender identity as impermissible grounds for discrimination in public lodging establishments and public food service establishments; defining the terms "gender identity" and "sexual orientation"; adding sexual orientation and gender identity as impermissible grounds for discrimination with respect to the sale or rental of housing, provision of brokerage services, financing of housing or in residential real estate transactions, and land use decisions and in permitting of development, respectively, etc.

Status: Introduced -SJ 85 - 03/07/2017

YOUR VOICE + YOUR STORY = RESULTS

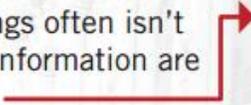
Only YOU Can Tell Your Story

When congressional staff were asked what influences their Member of Congress, they reported that constituent voices matter most!

94% of staff said that constituents are the most influential



Make Your Voice Resonate

Congressional staff report that the most helpful information constituents could provide in meetings often isn't conveyed. What information are they looking for? 



Information about impact of bill or issue on the district or state



Constituent's reasons for supporting/opposing the bill or issue



Personal story related to the bill or issue

Stand Out from the Crowd

Research your legislator, come prepared, rehearse your pitch.

Average number of daily meetings held by a Member of Congress: **13**



Continue to Build on the Relationship Back Home

Washington, DC or District meetings? 71% of House Chiefs of Staff say their Member of Congress has "no preference" on where is best to meet constituents.

