

# EEOC broadens its reach with 2 new discrimination lawsuits

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The EEOC has officially unveiled yet another way employees can sue you for discrimination.

The agency announced that it has filed its first two sex discrimination cases based on sexual orientation.

**EEOC's** Philadelphia District Office filed suit in U.S. District Court for the Western District of Pennsylvania against Scott Medical Health Center. The agency filed a separate suit in U.S. District Court for the District of Maryland, Baltimore Division, against Pallet Companies, doing business as IFCO Systems NA.

In the case against Scott Medical Health Center, EEOC charged that a gay male employee was subjected to harassment because of his sexual orientation. The agency said that the male employee's manager repeatedly referred to him using anti-gay epithets and made other offensive comments about his sexuality and sex life.

When the employee complained to the clinic director, the director responded that the manager was "just doing his job," and refused to take any action to stop the harassment, according to the suit.

After enduring weeks of such comments by his manager, the employee quit rather than endure further harassment, the EEOC claimed.

## Retaliation alleged, too

In its suit against IFCO Systems, EEOC charged that a lesbian employee was harassed by her supervisor because of her sexual orientation. Her supervisor made numerous comments to her regarding her sexual orientation and appearance, such as "I want to turn you back into a woman" and "You would look good in a dress," the agency said.

At one point, the supervisor blew a kiss at her and circled his tongue at her in a suggestive manner, EEOC alleged. The employee complained to management and called the employee hotline about the harassment. IFCO fired the female employee just a few days later in retaliation for making the complaints.

## Long time coming

Although these are the first lawsuits of their kind filed by the EEOC against private employers, the agency has maintained its stance that sexual orientation bias is covered under Title VII since 2013. No federal appeals court has ruled Title VII covers sexual orientation, however.

In a ruling last summer that covered only federal employees and contractors, the agency determined that sexual orientation discrimination is, by its very nature, discrimination because of sex.

In that case, EEOC explained the reasons why Title VII's prohibition of sex discrimination includes discrimination because of sexual orientation:

- Sexual orientation discrimination necessarily involves treating workers less favorably because of their sex because sexual orientation as a concept cannot be understood without reference to sex
- Sexual orientation discrimination is rooted in non-compliance with sex stereotypes and gender norms, and employment decisions based in such stereotypes and norms have long been found to be prohibited sex discrimination under Title VII, and
- Sexual orientation discrimination punishes workers because of their close personal association with members of a particular sex, such as marital and other personal relationships.

Prior to filing the two landmark lawsuits, the agency has administratively handled a number of cases where employees have alleged discrimination based on their sexual orientation.

In the past, a number of courts have ruled that sexual orientation isn't covered under federal anti-discrimination law — saying that discriminating against an employee based on sexual preference is different than discriminating against someone because of their gender.

We'll keep you posted.

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