

## Legal Sidebar

# Federal Law Prohibits Sexual Orientation Discrimination, Rules EEOC

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In a case with potentially far-reaching implications, the Equal Employment Opportunity Commission (EEOC) recently ruled that federal law prohibits employment discrimination on the basis of sexual orientation. The agency based its [decision](#) on its interpretation of [Title VII of the Civil Rights Act](#), a statute that prohibits employment discrimination on the basis of sex, among other factors. However, the EEOC's ruling is not binding on the federal courts, which have generally declined to extend Title VII's protections to cover claims based on sexual orientation. As a result, the effect of the ruling may be limited if the federal courts refuse to adopt its reasoning.

Currently, there is no federal law that expressly prohibits employment discrimination on the basis of sexual orientation, although there are [several](#) civil rights [statutes](#) that bar discrimination in employment on other grounds, including Title VII. In general, Title VII's prohibition against discrimination on the basis of sex has [traditionally been interpreted to exclude discrimination on the basis of sexual orientation](#). Although some have argued that sex discrimination encompasses sexual orientation discrimination, the federal appeals courts have generally rejected that theory, reasoning that the prohibition against sex discrimination refers only to the traditional definition of biological sex and that Congress did not intend Title VII to encompass claims based on sexual orientation.

It is important to note, however, that courts have held that the fact that a victim of discrimination is lesbian, gay, bisexual, or transgender (LGBT) does not preclude a claim under Title VII. In the employment context, the Supreme Court has recognized that [sex discrimination may encompass same-sex sexual harassment](#). The Court has also ruled that [gender stereotyping is a form of discrimination on the basis of sex](#). Thus, there may be circumstances in which discrimination against LGBT individuals nevertheless constitutes a form of sex discrimination that violates Title VII.

Against this backdrop, the EEOC's ruling appears at first glance to signify an expansion of the availability of legal protections for LGBT individuals. At issue in the case was a Federal Aviation Administration (FAA) employee's claim that his agency had engaged in unlawful sexual orientation discrimination when it refused him a promotion. The EEOC not only determined that the FAA had relied on sex-based considerations when denying the employee a promotion, but also reached the broader conclusion that "sexual orientation is inherently a 'sex-based consideration,' and an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII."

In reaching this conclusion, the EEOC cited several factors. First, according to the agency, "discrimination on the basis of sexual orientation is premised on sex-based preferences, assumptions, expectations, stereotypes, or norms." Second, reasoned the EEOC, sexual orientation discrimination involves treating an employee less favorably because of the employee's sex or because of the sex of a person with whom the employee associates. For example, noted the agency, an employer who distinguishes between a male and female employee, each of whom has a male spouse, is taking the sex of the employee into account when discriminating on the basis of sexual orientation. Finally, the EEOC determined that sexual orientation discrimination relies on gender stereotypes that constitute unlawful sex discrimination.

As noted above, the federal courts have generally reached the contrary conclusion, namely that Title VII's prohibition against sex discrimination does not extend to cover sexual orientation discrimination. In its decision, the EEOC criticized these rulings on several grounds. First, the agency cited cases in which the courts have ruled in favor of LGBT individuals who were victims of unlawful gender stereotyping. Although the vast majority of these cases involve [gender identity discrimination](#), a [handful](#) have applied [similar reasoning](#) to cases involving sexual orientation discrimination, as has the [agency](#) itself. The EEOC also criticized cases in which the "courts simply cite earlier and

dated decisions without any additional analysis,” noting that intervening decisions in other areas have expanded legal protections for LGBT individuals. Finally, the agency rejected the argument that Congress did not intend for Title VII to apply to claims of sexual orientation discrimination, reasoning that the plain language of statutory text is often construed to apply beyond the intended legislative target.

Nevertheless, it remains to be seen whether the federal courts will adopt the reasoning articulated in the EEOC’s decision. On the one hand, the agency’s ruling is an administrative decision that is not binding on the federal courts, which have consistently rejected sexual orientation claims brought under Title VII. On the other hand, the EEOC’s reasoning in this case may influence future rulings by the courts, especially in light of recent legal developments in other areas involving LGBT rights. As such, the case may signal a shift in settled law regarding the availability of Title VII and other legal protections for victims of sexual orientation discrimination. Regardless of the long-term implications, however, the EEOC’s ruling is likely to have an immediate, beneficial impact on LGBT individuals, given that the EEOC is responsible for handling initial claims processing for Title VII employment discrimination complaints.

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