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EEOC Files Amicus Brief Arguing Sexual Orientation Discrimination is a Form of Sex Discrimination

In the early days of 2016, the Equal Employment Opportunity Commission (EEOC) continues its strategic enforcement focus on LGBT rights. Last week, the EEOC filed an amicus brief in a U.S. Court of Appeals for the Eleventh Circuit case, *Burrows v. College of Central Florida*. In its brief, the EEOC argued that employment discrimination based on an individual's sexual orientation is a form of sex discrimination and unlawful under Title VII of the Civil Rights Act.

In the *Burrows* case, the plaintiff, a college administrator, sued her former employer, claiming she was discriminated against because she is a lesbian and married to a woman. The plaintiff is appealing her lawsuit, to the Eleventh Circuit Court of Appeals, against the former employer after a Florida district court judge dismissed her case, finding that Title VII does not cover sexual orientation discrimination.

To date, no federal appellate court has held that Title VII's ban on sex discrimination includes sexual orientation discrimination. However, both the Fifth and Sixth Circuit Court of Appeals have found that LGBT employees who demonstrate bias based on failing to conform with gender roles have raised proper sex discrimination claims under Title VII.

The EEOC's amicus brief is the latest move in the agency's efforts to protect LGBT people from discrimination. The EEOC's argument is consistent with its own ruling in July 2015 that allegations of discrimination on the basis of sexual orientation necessarily state a claim of discrimination on the basis of sex. The EEOC's July ruling applies only to federal agencies, and is not binding on federal courts. The amicus brief was likely filed by the EEOC as part of its efforts to have federal courts affirm the agency's interpretation of the law.

If a circuit split occurs on this issue, the stage may be set for review by the U.S. Supreme Court. Because Minnesota law expressly prohibits discrimination based on sexual orientation, most employers have adjusted their policies and taken steps to prevent such discrimination in the workplace. Non-Minnesota employers should review their policies, procedures, and benefits in order to avoid a potential legal claim.

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