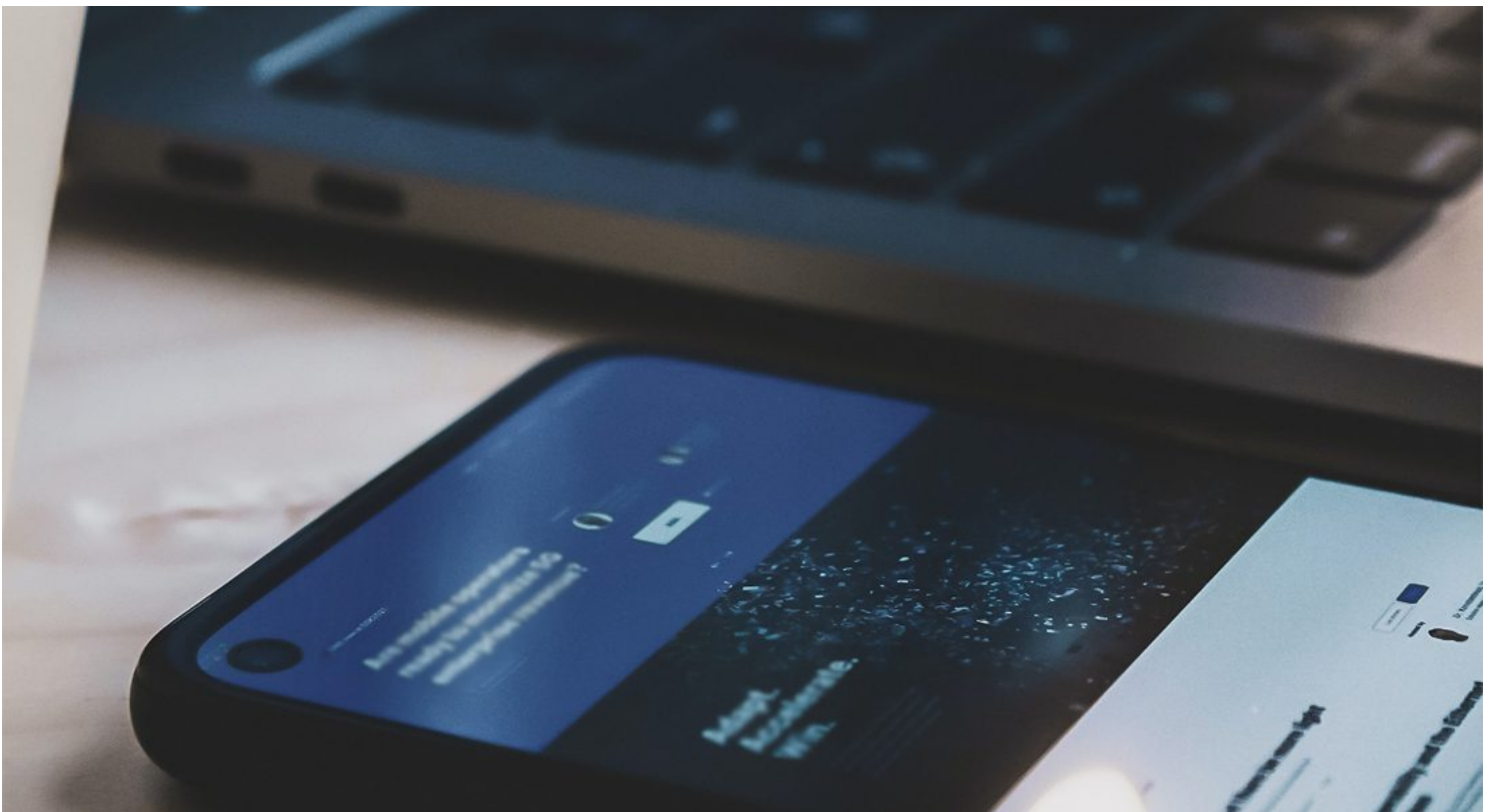


NEWS & INSIGHTS

Recent Title VII Ruling Warrants Revisiting Sexual Harassment Policies and Procedures

[INSIGHTSLEGAL UPDATE](#)

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In late 2017, a Pennsylvania federal judge ordered a Pennsylvania hospital to pay compensatory and punitive damages in the first-ever sexual orientation discrimination lawsuit filed by the Equal Employment Opportunity Commission. This ruling, supported by a 16-page finding of fact and conclusions of law, has set a precedent that sexual orientation is a protected status in the workplace.

Title VII governs workplace discrimination and prohibits harassment and disparate treatment on the basis of race, color, religion, sex, or national origin. Although sexual orientation is not a specifically protected status under the federal statute, the EEOC determined that when an employer discriminates against an employee because of sexual orientation, the employer has engaged in disparate treatment “related to the sex of the victim.”

In March 2016, the EEOC filed the first sex discrimination lawsuit based on sexual orientation in the US District Court for the Western District of Pennsylvania. Specifically, the EEOC alleged that a telemarketer employed at Scott Medical Health Center was taunted by his manager about his sexual orientation. The employee reported the harassment up the chain of command, including to the president, but nothing was done in response. The employee quit a month after he started rather than enduring further harassment. Because sexual orientation is not particularly designated a specific protected class under Title VII, the health center moved to dismiss the lawsuit.

The court denied the motion. In so doing, the court found that sexual orientation discrimination is a type of discrimination “because of sex,” and, therefore, was barred by Title VII. Applying decisions of the U.S. Supreme Court interpreting Title VII’s ban on sex discrimination to include adverse treatment of workers based upon “sex stereotypes,” the court held that:

There is no more obvious form of sex stereotyping than making a determination that a person should conform to heterosexuality That someone can be subjected to a barrage of insults, humiliation, hostility and/or changes to the terms and conditions of their employment, based upon nothing more than the aggressor’s view of what it means to be a man or a woman, is exactly the evil Title VII was designed to eradicate.

After holding that sexual orientation discrimination was protected under Title VII, which reflected a parting of the ways with other Circuits, the court entered a judgment finding Scott Medical liable.

In its November 2017 decision addressing damages, the court imposed the statute’s maximum permitted damages because Scott Medical’s anti-harassment policy specifically condemned harassment on the basis of sexual orientation, but the employer failed to educate its employees and supervisors on the policy and failed to enforce it. As was established through discovery, the harassing employer had not been trained on this policy at all.

In addition to compensatory damages, the court condemned Scott Medical’s P knowledge of, but failure to respond to, the harassment by awarding punitive damages. The court found that, by tolerating the manager’s behavior, the employer permitted the creation and perpetuation of a sexually hostile work environment. Therefore, the court held Scott Medical acted with malice or reckless indifference to the employee’s protected rights.

Importantly, **Scott Medical Center did not appeal to the Third Circuit.** Therefore, this decision currently stands as persuasive authority for other Pennsylvania federal courts to acknowledge Title VII protects employees from harassment on the basis of sexual orientation. While some federal courts outside Pennsylvania have refused to follow Scott Medical and, instead, continue to follow Circuit precedent reaching the opposite conclusion, employers should take action now to protect their employees from harassment – and themselves from liability and the types of damages awarded in this lawsuit.

Employers should approach the new year as an opportunity to revisit their discrimination policies and procedures. Employers should also ensure that their employees are educated and trained on workplace anti-discrimination and harassment policies to raise awareness of the issues and the possible repercussions should enforcement become necessary.

Employers should also strengthen internal investigation procedures to ensure complaints of discrimination and harassment are promptly and fully investigated and appropriate action is taken. Doing so can provide an opportunity for an employer to successfully assert a good faith defense against punitive damages – something for which Scott Medical was ineligible.

Saxton & Stump's Labor and Employment Group

Saxton & Stump's [Labor and Employment Group](#) counsels employers on risk mitigation strategies. This includes policy creation and review, as well as workflow and documentation training to ensure employers do not let workplace complaints fall through the cracks. While it is likely the Supreme Court will eventually consider the Circuit Split regarding the scope of Title VII's protections, employers should take preemptive correction actions now to create a workplace free of harassment and discrimination for all its employees.

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