

NEWS ALERT

LABOR & EMPLOYMENT



Employers Must Be Alert to Sexual Orientation Discrimination

By Salvatore G. Gangemi | May 8, 2017

Many states, including New York, Massachusetts and Connecticut, prohibit employment discrimination based upon an individual's sexual orientation. Federal law (i.e., Title VII) prohibits employment discrimination because of an individual's sex. It does not, however, expressly prohibit discrimination based on an individual's actual or perceived sexual orientation. Recently, federal courts have started to conclude that discrimination on the basis of sexual orientation is a form of sex discrimination because it inherently involves gender stereotyping and "notions about how men and women should behave will often necessarily blur into ideas about heterosexuality and homosexuality."

In a recent case, decided on May 3, 2017, a New York federal court refused to dismiss a claim for sexual orientation discrimination under Title VII in *Philpott v. State of New York*, finding that sexual orientation discrimination is a form of sex discrimination because "sexual orientation cannot be defined or understood without reference to sex." As the court observed, the plaintiff's allegations could potentially support a claim of gender stereotyping discrimination. The allegations included statements attributed to the President of SUNY Optometry that referred to the plaintiff as "sensitive," "flamboyant," and "frenetic." This same official told the plaintiff that "separate but equal treatment of gay people might be best," and that upon learning that plaintiff's relationship with his domestic partner had ended, this official told the plaintiff that "this marriage, or whatever you want to call it, is a distraction to the College."

A finding that Title VII prohibits sexual orientation discrimination as a form of sex discrimination would not affect employers and employees in states such as New York, Connecticut and Massachusetts that already prohibit such discrimination. Nevertheless, the federal court's decision in *Philpott* highlights that even senior management officials in states like New York, where sexual orientation discrimination is already illegal, require training to remind them that stereotyping is discriminatory, and cannot be considered in workplace decisions. If you have any questions on this or any other employment issue, please contact a member of our group.

If you have any questions regarding the information included in this bulletin, please contact:

Salvatore G. Gangemi at 203.653.5436 or sgangemi@murthlaw.com or

Michael C. Harrington at 860.240.6049 or mharrington@murthlaw.com

Sexual orientation discrimination is a form of sex discrimination because "sexual orientation cannot be defined or understood without reference to sex."

Michael Colgan Harrington, Chair

860.240.6049

mharrington@murthalaw.com

Susan J. Baronoff

617.457.4031

sbaronoff@murthalaw.com

Emily G. Brown

617.457.4121

ebrown@murthalaw.com

Salvatore G. Gangemi

203.653.5436

sgangemi@murthalaw.com

Madiha M. Malik

860.240.6164

mmalik@murthalaw.com

Lissa J. Paris

860.240.6032

lparis@murthalaw.com

Rachel Faye Smith

617.457.4023

rsmith@murthalaw.com

Sonia Macias Steele

617.457.4118

ssteele@murthalaw.com

Barry J. Waters

203.772.7719

bwaters@murthalaw.com

Kristen L. Zaehring

203.653.5406

kzaehring@murthalaw.com

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