

Employment Law Update*May 2017*

Faulkner, Garmhausen, Keister & Shenk is a Sidney, Ohio based law firm with 14 attorneys and 3 offices. Our practice is ideally located to serve the business and legal needs of our clients along the Interstate 75 corridor in west central Ohio. Our attorneys and staff are committed to providing quality legal services on a timely basis and at a reasonable fee.

We represent clients ranging from large corporations to small enterprises and individuals. We have the resources to assemble a coordinated team of lawyers and support staff to meet the specific needs of each client.

For a list of our attorneys or practice areas please visit our website, available at: www.fgks-law.com, or call us at (937) 492-1271.

This alert is being distributed and published as a service to our clients. It should be viewed as a succinct summary of the law and not as a substitute for legal consultation. Please contact legal counsel to discuss your specific situation and any information found in this alert.

In a significant decision that expands the rights of employees, the U.S. Court of Appeals for the Seventh Circuit, which covers Illinois, Indiana, and Wisconsin, recently ruled that discrimination on the basis of sexual orientation is a form of sex discrimination under Title VII of the Civil Rights Act of 1964. The case, *Kimberly Hively v. Ivy Tech Community College*, No. 15-1720 (7th Cir. April 4, 2017), is the first, and at this time the only, federal circuit court decision to reach this conclusion.

In that case, Kimberly Hively, a part-time professor at Ivy Tech Community College, alleged that she was repeatedly denied consideration for full-time positions and her part-time contract was not renewed due to her sexual orientation. She filed suit in the U.S. District Court for the Northern District of Indiana, alleging violations of Title VII. The District Court dismissed the case on the grounds that sexual orientation is not a protected class under Title VII. Ms. Hively appealed the District Court's dismissal to the Seventh Circuit. She alleged that "if she had been a man married to a woman and everything else had stayed the same, Ivy Tech would not have refused to promote her and would not have fired her." Based upon these allegations, the Seventh Circuit held that "a person who alleges that she experienced employment discrimination on the basis of her sexual orientation has put forth a case of sex discrimination for Title VII purposes" based upon the "common sense reality" that it is impossible to discriminate on the basis of sexual orientation without discriminating on the basis of sex.

While the Seventh Circuit is not the first court to hold that Title VII protects sexual orientation, it is the highest court to make such a finding. The U.S. Equal Employment Opportunity Commission (EEOC) has taken a similar position since 2015. This issue will likely find its way to the U.S. Supreme Court sooner rather than later.

Although the Seventh Circuit's decision is not binding on Ohio employers, its ruling suggests a growing trend to recognize sexual orientation as a protected class under Title VII. Employers would be wise to keep an eye on this trend and be cautious in making any employment-related decisions based on an employee's sexual orientation.

If you have any questions or would like to discuss the above issues in more detail, please do not hesitate to contact Bryan Niemeyer, Certified Labor and Employment Law Specialist, Faulkner, Garmhausen, Keister & Shenk, A Legal Professional Association, at 937-492-1271 or bniemeyer@fgks-law.com.