

CAPLAW *e-news brief*

On the Horizon: Sexual Orientation as a Basis for Discrimination

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August 2015

The U.S. Equal Employment Opportunity Commission's (EEOC) recent inclusion of sexual orientation as a basis for which a discrimination claim may be filed against a federal agency serves as cautionary signal for private employers, including Community Action Agencies (CAAs). On July 16, 2015, the EEOC in *Complainant v. Foxx*, E.E.O.C. Appeal No. 0120133080 (July 16, 2015) concluded that Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination based on sexual orientation. In that decision, a temporary employee of a federal agency alleged that he was not promoted to a permanent position because of his sexual orientation. While Title VII prohibits discrimination on the basis of sex, it does not explicitly ban discrimination on the basis of sexual orientation. However, the EEOC provided three different reasons to support its finding that sexual orientation discrimination is a form of sex discrimination.

Though the EEOC's ruling is only binding on federal agencies and departments, it likely will have repercussions for private sector employers. The EEOC indicated in its [Strategic Enforcement Plan for FY 2013-2016](#) that one of its enforcement priorities would be the protection of lesbian, gay, bisexual, and transgender employees under Title VII, and federal courts will probably give at least some deference to the EEOC's decision. Given that the EEOC did not limit its holding to the facts of the case but appeared to apply its

interpretation of Title VII's availability to sexual orientation discrimination claims broadly, this decision suggests that the EEOC may employ a similar rationale to claims brought by private sector employees. However, many federal appeals courts have concluded that discrimination on the basis of sexual orientation is not prohibited by Title VII. Before taking any actions based on the EEOC's interpretation, CAAs should consult with an employment law attorney knowledgeable about the federal and state discrimination laws applicable to that CAA.

For more information about this decision and its impact on all employers, read this [legal alert](#) from the law firm Kilpatrick Townsend & Stockton LLP.

This article is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Grant Award Number 90ETO441-01. Any opinion, findings, and conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.