

Caution to All Employers: Title VII Confusion Continues

On December 11, 2017, the U.S. Supreme Court declined to decide whether Title VII bans employment discrimination based on sexual orientation, leaving in place a pronounced circuit court split on the issue.

In [*Evans v. Georgia Regional Hospital*](#), the Eleventh Circuit Court of Appeals held that homosexuality is not a protected category under Title VII. This ruling was in stark contrast to [*Hively v. Ivy Tech Community College of Indiana*](#), in which the Seventh Circuit Court held that Title VII *does* prohibit discrimination on the basis of sexual orientation. The plaintiff, Jameka Evans, sought a review from the nation's high court; however, it declined to resolve the circuit split on this important issue. The controversy also is pending in the Second Circuit Court, which held an *en banc* rehearing in a similar case on September 26, 2017, but has yet to issue an opinion.

Notably, the EEOC interprets and enforces Title VII's prohibition of sex discrimination as forbidding any employment discrimination based on *gender identity or sexual orientation*. Employers thus should remain cautious and seek counsel when confronting potential claims of sexual orientation discrimination regardless of jurisdiction.

Riley Safer Holmes & Cancila LLP's employment lawyers have extensive experience litigating and trying employment discrimination claims, including those based on sexual orientation. We work with employers to develop and conduct training and compliance programs for harassment and discrimination-related issues at manager and hourly employee levels. We regularly draft and optimize critical employment documentation, conduct internal investigations, as well as counsel and defend our clients against harassment and discrimination claims before local, state and federal agencies and courts.

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