

Recent Ruling in LGBT Case Another Reminder That Religion Cannot Justify Discrimination

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We predicted in blog posts on [July 24th](#) and [July 7th](#) that we would be seeing more in the way of LGBT litigation. I also recommended that managers be given extra training or reminders that in states where LGBT discrimination is unlawful it will not be tolerated. Further, managers cannot allow their personal or religious beliefs about anything to invade the workplace, or to affect how they treat LGBT employees.

Both predictions now ring true.

In a decision issued last week, Judge Weinstein of the US District Court for the Eastern District of New York affirmed a jury verdict against UPS, based on claims of harassment and discrimination of a lesbian employee by a male manager. *Roberts v. United Parcel Service*, 13 – cv-6161.

The judge started the decision by stating “[a]s the nation’s understanding and acceptance of sexual orientation evolve, so does the law’s definition of appropriate behavior in the workplace ... The jury found improper under the law repeated ‘advice’ from plaintiff’s supervisor that her sexual orientation as a lesbian was evil and needed to be changed in accordance with religious dictates. Appeals to the bible, or theology generally, cannot justify management’s condoning the harassing of a lesbian in the workplace. Defendant’s central administration failed to protect plaintiff from such abuse.”

According to the decision, the plaintiff, Tameeka Roberts, a lesbian who was married and had 3 children, was assigned to work under “Bob W,” a manager. Over the course of several years, Bob repeatedly told Ms. Roberts that she was “evil” and the bible prohibited her lifestyle. He also made comments to the effect that her behavior was “not natural” and she was “going to hell.” She complained to her union, to HR and other UPS managers. After several complaints, senior management and HR did investigate, but concluded that Bob’s behavior was not a violation of the UPS harassment policy. At trial, several UPS executives testified that they did reach that conclusion. Thus, Bob was never formally disciplined. Ms. Roberts claimed that Bob then retaliated by changing her time card and hitting her with packages. She eventually quit the job and claimed constructive discharge.

The District Court, in affirming the jury’s verdict, went to great lengths to set forth the history of LGBT legal protections, and explore the debate in the law as to whether Title VII prohibited discrimination based on sexual orientation. The Judge noted that the EEOC had just recently concluded that this was a prohibited form of discrimination under federal law, and that a number of states had enacted laws which prohibited such discrimination.

He then went on to note that New York State and City law specifically prohibit this discrimination and that Ms. Roberts' allegations of "discriminatory comments about plaintiff's sexual orientation made over a number of years, show adverse differential treatment. So too do the significant failures of supervisors to protect plaintiff against discrimination." Based on the record, he affirmed the verdict of compensatory and punitive damages for the plaintiff.

What lessons can employers take from this case?

- You cannot turn a blind eye (or ear) to claims that a supervisor is making negative comments about gay, lesbian or transgender employees. This is especially true if you are in a state like New York, where such conduct is explicitly prohibited.
- You must make sure that all of your Human Resource staff understand the importance of your harassment and discrimination policies, and that they should be a resource that employees can turn to for help if they do perceive that behavior occurring in the workplace. We often find that if a company can address a complaint internally, it is far better than fighting it out with a former employee in court.
- As society changes the workplace must evolve also. Don't let your workplace be caught behind the times. The time you spend now educating your employees and ensuring that LGBT harassment does not occur will pay for itself if you avoid even one lawsuit.