

LGBT workers protected by Civil Rights Act, court rules

A federal appeals court ruled for the first time Tuesday that the 1964 Civil Rights Act protects LGBT employees from workplace discrimination, setting up a likely battle before the Supreme Court as gay rights advocates push to broaden the scope of the 53-year-old law.

The 8-to-3 decision by the full 7th U.S. Circuit Court of Appeals in Chicago comes just three weeks after a three-judge panel in Atlanta ruled the opposite, saying employers aren't prohibited from discriminating against employees based on sexual orientation.

The 7th Circuit is considered relatively conservative and five of the eight judges in the majority were appointed by Republican presidents, making the finding all the more notable.

The case stems from a lawsuit by Indiana teacher Kimberly Hively alleging that the Ivy Tech Community College in South Bend didn't hire her full time because she is a lesbian.

In an opinion concurring with the majority, Judge Richard Posner wrote that changing norms call for a change in interpretation of the Civil Rights Act, which bars discrimination based on race, color, religion, national origin or sex.

"I don't see why firing a lesbian because she is in the subset of women who are lesbian should be thought any less a form of sex discrimination than firing a woman because she's a woman," wrote the judge, who was appointed by Republican Ronald Reagan.

The decision comes as President Donald Trump's administration has begun setting its own policies on LGBT rights. Late in January, the White House declared Trump would enforce an Obama administration order barring companies that do federal work from workplace discrimination on the basis of sexual identity. But in February, it revoked guidance on transgender students' use of public school bathrooms, deferring to states.

Hively said after Tuesday the ruling that she agreed to bring the case because she felt she was being "bullied."

She told The Associated Press in a telephone interview that the time has come "to stop punishing people for being gay, being lesbian, being transgender."

"This decision is game changer for lesbian and gay employees facing discrimination in the workplace and sends a clear message to employers: it is against the law to discriminate on the basis of sexual orientation," said Greg Nevins, Employment Fairness Program Director for Lambda Legal, which brought the case on behalf of Hively.

The issue could very well land before the Supreme Court at some point. A GOP-majority House and Senate make it unlikely the Congress will amend the Civil Rights Act; Title VII is the section of the law dealing discrimination on the basis of sex. The Chicago ruling came on the anniversary of the assassination of civil rights icon Martin Luther King, whose marches against racism prompted Congress to pass the landmark law.

The debate in the Hively case revolved around the meaning of the word 'sex' in Title VII. Other courts have concluded that Congress meant for the word to refer only to whether a worker was male or female. They said that it would be wrong to stretch the meaning of 'sex' in the statute to also include sexual orientation.

The majority of the 7th Circuit sided with a broader meaning.

"Any discomfort, disapproval, or job decision based on the fact that the complainant -- woman or man -- dresses differently, speaks differently, or dates or marries a same-sex partner, is a reaction purely and simply based on sex. That means that it falls within Title VII's prohibition against sex discrimination ...," writes Judge Diane Wood, a President Bill Clinton appointee.

The dissenting opinion -- written by Judge Diane Sykes, a conservative who was on Trump's list of possible Supreme Court appointees, said the majority were stretching the meaning of the law's text.

"We are not authorized to infuse the text with a new or unconventional meaning or to update it to respond to changed social, economic, or political conditions."

The dissent also alludes to the judicial philosophy of Trump's high-court nominee, Neil Gorsuch, who advocates adhering largely to original legislative texts in deciding legal disputes.

"It's understandable that the court is impatient to protect lesbians and gay men from workplace discrimination without waiting for Congress to act. Legislative change is arduous and can be slow to come. But we're not authorized to amend Title VII by interpretation," Sykes writes.

Posner, though, said sticking to outdated meanings and fading cultural standards didn't make sense.

"It is well-nigh certain that homosexuality, male or female, did not figure in the minds of the legislators who enacted Title VII," he writes in his concurring opinion.

"They (lawmakers in the 1960s) shouldn't be blamed for that failure of foresight," he writes. "We understand the words of Title VII differently not because we're smarter than the statute's framers and ratifiers but because we live in a different era, a different culture."

By: Associated Press