Published May 3, 2025

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

Sexual Orientation Discrimination: Landmark Decision from Federal Court of Appeals

Last week, the U.S. Court of Appeals for the Seventh Circuit issued its decision in *Hively v. Ivy Tech Community College of Indiana*. The decision tackles the issue of whether Title VII of the Civil Rights Act of 1964's ban on "sex discrimination" includes a ban on discrimination on the basis of sexual orientation. On an 8-3 vote, the Judges from the Seventh Circuit determined that sexual orientation discrimination is virtually indistinguishable from sex discrimination because both rely on stereotyped concepts of the sexual behavior and lives of men and women.

The *Hively* case involved a lesbian, part-time adjunct professor at a community college in South Bend, Indiana. The professor applied for multiple full-time positions at the Community

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

College but was denied each position and subsequently terminated. Believing that the Community College's actions were due to discrimination on the basis of her sexual orientation, the professor filed a charge with the Equal Employment Opportunity Commission ("EEOC"). She received a right to sue letter, and filed a claim against the Community College in federal court. The Community College successfully argued in the lower court that sexual orientation was not a protected category under Title VII. The Seventh Circuit's determination last week overturns this earlier ruling and any other ruling finding that sexual orientation is not a Title VII protected class in courts under jurisdiction of the Seventh Circuit (that is in, Illinois, Indiana and Wisconsin).

The decision is a landmark one because it is the first decision in any U.S. Court of Appeals ruling that sexual orientation is protected under Title VII. However, the ruling's practical impact on Illinois employers is likely to be slight because Illinois already included "sexual orientation" as a protected category under the Illinois Human Rights Act. Under the Human Rights Act, Illinois declared it public policy of the State that all individuals within Illinois are entitled to freedom from

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

discrimination on the basis of seventeen protected categories, including sexual orientation. Because of the protections afforded under State law, employment claims alleging workplace discrimination on the basis of sexual orientation were most frequently brought under an investigation by the Illinois Department of Human Rights or the Human Rights Commission, which are the entities charged with investigating complaints filed under the Human Rights Act. The Seventh Circuit's ruling in *Hively*, however, means that there may be future claims of discrimination arising under federal law and actively investigated by the EEOC.

The decision is also important because of the tension it creates with the other so-called Sister Circuits of the U.S. Courts of Appeals. In March 2017, the U.S. Court of Appeals for the Second Circuit (covering Connecticut, New York and Vermont) refused to overturn a precedential decision in that Circuit holding that Title VII does not prohibit discrimination on the basis of sexual orientation. In *Christiansen v. Omnicom*, the Second Circuit affirmed that being gay, lesbian or bisexual does not, in and of itself, constitute nonconformity with a gender stereotype that can give rise to a sex discrimination claim.

Because of the tension between the two Circuit Court decisions, this issue may soon be ripe for an appeal to the U.S. Supreme Court. However, it appears that battle will wait for another day: the Ivy Tech Community College of Indiana has indicated to multiple news sources that it will not seek Supreme Court review of the Seventh Circuit's determination.

If you have additional questions about the Seventh Circuit's determination, the state of the law in Illinois, or this issue in general, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200).

Hospital Tax Exemptions: Major Developments But No Resolution

In three opinions issued within days of each other, the Illinois Supreme Court and the Illinois Appellate Court signaled that the ongoing controversy concerning whether hospitals owned by non-

---

profit corporations are entitled to exemption from local property taxes will continue for some time to come.

The vast majority of hospitals in Illinois are owned by corporations without shareholders, and are thus classified as "non-profit" for federal and state income tax purposes. But that classification alone does not mean that these are charitable institutions which may be granted exemption from property taxes under the Illinois Constitution. Nonetheless, in 2012, the Illinois General Assembly created a special category for non-profit hospitals under the Property Tax Code. Section 15-86 of the Code now provides that hospital owners avoid property taxes entirely if they can demonstrate that the value of certain defined "beneficial services" are greater than the value of the property taxes the hospital owners would have to pay if the property were taxable. As a practical matter, this standard has been very easy for hospitals to meet, even where truly charitable services have been just a small part of their business.

Several challenges have arisen to the legislature's favorable treatment for hospitals. In the case of *Carle Foundation v. Cunningham Township*, local assessment officials in Champaign

PETRARCA, GLEASON, BOYLE & IZZO, LLC
ATTORNEYS AT LAW

County have been trying to tax the Carle Foundation Hospital, but hospital owners went first to court to fight that effort. In January 2016, as we reported in a previous Priority Briefing, the Illinois Appellate Court ruled that Section 15-86 was unconstitutional and invalid. However, on March 23, 2017, the Illinois Supreme Court vacated the Appellate Court's ruling, not on the merits of the dispute, but because it decided that the issue of the constitutionality of Section 15-86 should not have been decided by the Appellate Court while the underlying claim was still to be decided in the circuit court. The effect of this decision by the Supreme Court, besides sending the parties in that case back to the lower court, is to leave the validity of Section 15-86 still in doubt and without providing any guidance to local and state property tax officials, at least not yet.

Next, in the case of *Oswald v. Hamer*, a taxpayer sought a declaration by the courts that Section 15-86 is invalid on its face because it contradicts the charitable tax exemption provision of the Illinois Constitution. In December 2016, the Illinois Appellate Court issued an opinion that the statute is facially valid, but only because it interpreted Section 15-86 as

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

not removing the constitutional requirement that hospitals also demonstrate that they are charitable in order to qualify for property tax exemption. The taxpayer sought rehearing in the *Oswald* case, but on March 31, 2017, the Appellate Court declined to reconsider its opinion. While it is not yet known whether the taxpayer will seek Supreme Court review of this case, some of the Supreme Court justices during the oral argument of the *Carle Foundation* case indicated an awareness of *Oswald* and an opinion that it presented a more suitable vehicle to reach the merits of the validity of Section 15-86. Keep in mind that should the Appellate Court's interpretation of the statute in *Oswald* prevail in the Supreme Court, very few hospitals would likely retain their exempt status.

In a third case, a tax exemption granted to NorthShore University Healthsystem is being challenged in the Illinois Department of Revenue by Niles Township High School District 219. In an effort to circumvent the Department's proceedings, NorthShore went to court, arguing that the District's hearing requests were insufficient for failure to specify the Department's errors in issuing exemption certificates, even though the Department had not stated its bases for issuing those

certificates in the first place. The Circuit Court dismissed NorthShore's case and, on March 28, 2017, in the case of *NorthShore University Healthsystem v. Illinois Department of Revenue*, the Appellate Court agreed with the Department and the Circuit Court that NorthShore had to complete Department's hearing procedure before going to court. That ruling will allow the Department to rule first on the NorthShore tax exemption.

Hauser Izzo, LLC attorneys are deeply involved in each of those cases. John M. Izzo and Eugene C. Edwards are representing District 219 in the NorthShore litigation. Further, John and Eugene submitted an *amicus curiae* brief on behalf of the Illinois Association of School Boards, the Illinois Association of School Administrators, and the Illinois Association of School Business Officials in the *Carle Foundation* appeal to the Supreme Court. Finally, John and Eugene also submitted an *amicus curiae* brief to the Appellate Court on behalf of IASA and IASBO in the *Oswald* case.

If you have questions regarding the recent developments of these cases, please contact one of our attorneys in Flossmoor (708) 799-6766 or Oak Brook (630) 928-1200.