

LABOR AND EMPLOYMENT UPDATE
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SECOND CIRCUIT SAYS TITLE VII COVERS DISCRIMINATION BASED ON
SEXUAL ORIENTATION

Today, the Second Circuit Court of Appeals in Manhattan ruled that a federal law banning sex bias in the workplace also prohibits discrimination against gay employees, becoming only the second court to do so. The court overruled prior decisions and said that a worker's sex is necessarily a factor in discrimination based on sexual orientation. In its 10-3 decision, Judge Robert Katzmann wrote that even though Congress had not sought to address gay bias in Title VII, laws "often go beyond the principal evil to cover reasonably comparable evils."

The ruling went against a court brief filed by the Trump administration in 2017 that said Title VII of the Civil Rights Act of 1964 was not intended to provide protections to gay workers. The Second Circuit's decision revived a lawsuit by the estate of Donald Zarda, a former skydiving instructor on Long Island who said he was fired after he told a customer he was gay and she complained. The ruling is a victory for Zarda's estate, overruling a lower court on this issue and remanding the case to be relitigated with the Second Circuit Court's decision in mind.

The ruling does not apply nationwide, instead only applying to the Second Circuit, which is made up of Connecticut, New York, and Vermont. Last April, the Chicago-based 7th U.S. Circuit became the first court to find that Title VII bans gay bias in the workplace. In December, the U.S. Supreme Court in December declined to take up a different case out of Georgia that posed the same question.

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