

Employment Discrimination

Prowel v. Wise Business Forms, 07-3997 (3d Cir. Aug.28, 2009)

Victory for Victims of Sex Discrimination Based on Gender Stereotyping - Even if They're Gay

On Friday, August 28, 2009, the U.S. Court of Appeals for the Third Circuit issued a ruling in Prowel, which states clearly that a plaintiff can bring a claim of gender stereotyping sex discrimination under Title VII even if there is coexisting evidence of sexual orientation discrimination. This ruling is an important victory for women's rights advocates and will have an especially helpful impact on women in nontraditional employment, who frequently suffer not only gender stereotyping discrimination, but also discrimination on the basis of their real or perceived sexual orientation.

The Prowel case involved a western Pennsylvania employee who was continuously harassed and finally terminated from his factory job. The record showed that Mr. Prowel did not conform to male gender stereotypes, and that much of the harassment he endured from his coworkers focused on his effeminacy; some of the harassment, however, focused on his perceived homosexuality. The trial court dismissed Mr. Prowel's Title VII sex discrimination claim, holding that homosexuality is not a protected classification under federal anti-discrimination laws, and that Mr. Prowel's sex discrimination claim was in reality nothing but an artfully-pled sexual orientation claim in disguise.

On appeal, the Women's Law Project and Legal Momentum submitted a brief on behalf of 21 organizations representing women in non-traditional employment, which argued that if sex discrimination claims fail anytime the record also contains evidence of sexual orientation discrimination, Title VII would be eviscerated as to the very women who are most victimized in the workplace: women in nontraditional employment. Our brief surveyed the developing law in this field in this and the other circuits, showing that the district court erred by adopting reasoning that could seriously weaken Title VII and remove an entire class of people from its protection against sex discrimination.

Today, a three-judge panel of the 3d circuit, made up of Judges Fisher, Chagares and Hardiman, vacated the district court judgment dismissing the plaintiff's complaint and remanded the case for further proceedings. The court, however, affirmed the dismissal of Mr. Prowel's religious discrimination claim, concluding that this claim was just an artful way of pleading sexual orientation discrimination, against which there is presently no legal protection.

In discussing Mr. Prowel's gender stereotyping discrimination claim, Judge Hardiman writing for the unanimous appeals court panel reasoned:

"[The employer] argues persuasively that every case of sexual orientation discrimination cannot translate into a triable case of gender stereotyping discrimination, which would contradict Congress's decision not to make sexual orientation discrimination cognizable under Title VII. Nevertheless, [the employer] cannot persuasively argue that because Prowel is homosexual, he is precluded from bringing a gender stereotyping claim. There is no basis in the statutory or case law to support the notion that an effeminate heterosexual man can bring a gender stereotyping claim while an effeminate homosexual man may not. As long as the employee--regardless of his or her sexual orientation--marshals sufficient evidence such that a reasonable jury could conclude that harassment or discrimination occurred "because of sex," the case is not appropriate for summary judgment."

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Judge Hardiman quoted language from the famous gender stereotyping case of *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (plurality opinion): “We are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for ‘[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.’”

Congratulations to Brian Prowel and to his counsel, Katie Eyer, Corey Davis and Tim O’Brien.

October 2008: Prowel v. Wise Business Forms

In this case, the WLP and the legal women’s advocacy group Legal Momentum, represented women’s organizations in an appeal of a former employee of Wise Business Forms in Butler County, Western Pennsylvania.

The employee was the victim of gender stereotyping and was harassed for failing to conform to stereotypical male behavior and appearance. After he was fired in retaliation for trying to address the harassment, Brian Prowel filed a lawsuit in 2006 under Title VII, which prohibits sex discrimination in employment. The U.S. District Court ruled that the case involved sexual orientation discrimination (which is not illegal in Butler County), not sex discrimination.

Mr. Prowel appealed the ruling, and oral argument was heard on Oct. 1, 2008 in the U.S. Court of Appeals for the Third Circuit. We later filed an amicus brief in the Prowel appeal, arguing that working women targeted by sexual harassment in the form of gender stereotyping will lose legal protection under Title VII if the lower court’s reasoning is adopted.