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Protections for LGBT Workers

Ed MacConnell | Total Benefit Solutions Inc. | (215) 355-2121 | edmac@totalbenefits.net

The EEOC has explained on its website that lesbian, gay, bisexual, and transgender (“LGBT”) individuals may bring valid sex discrimination claims against employers. A memorandum lists insurance issues involving benefits for same-sex couples as an issue of particular interest to the EEOC.

Background

Title VII, in part, requires that employers may not discriminate as to employment or benefits based on sex. There is no official statutory extension of Title VII’s protections to LGBT employees. Older court decisions have concluded that Title VII does not provide a cause of action for sexual orientation discrimination (as opposed to discrimination against women), although recent case law is evolving.

EEOC Post

A recent EEOC post explains that, based on recent rulings and lawsuits, the EEOC has instructed its investigators and attorneys to counsel individuals who believe they have been discriminated against because of their sexual orientation or transgender status that they may file a complaint of sex discrimination under Title VII. The instructions are derived from a number of actions, including a 2012 EEOC ruling that employment discrimination because of an employee’s gender identity is prohibited discrimination based on sex, as well as a 2012 EEOC strategic enforcement plan designating this as an emerging and developing issue. The EEOC position is not binding on courts, although it can carry significant weight.

Other Developments

In related news:

- The EEOC and other federal Government agencies released a guide on the rights and processes available to applicants and employees of federal agencies who allege sexual orientation or gender identity discrimination.
- OSHA published a Guide to Restroom Access for Transgender Workers, providing guidance to employers on best practices regarding restroom access for transgender workers.

Employer Action

In light of these developments, employers may want to revisit their anti-discrimination policies to ensure that they extend to LGBT employees. With respect to group plans, employers may want to begin to review:

- Current plan eligibility and coverage rules; and
- Plan documentation and communications.

Employers should look for further guidance.