

Court Invites EEOC's Opinion On Whether Title VII Prohibits Sexual Orientation Discrimination

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**Douglas M.
Oldham**
Of Counsel

We recently updated you on the [Zarda v. Altitude Express, Inc.](#), case before the U.S. Court of Appeals for the Second Circuit. The Second Circuit granted en banc review of the plaintiff's claim to consider whether Title VII prohibits discrimination on the basis of sexual orientation. Now the court has taken an additional step of inviting the Equal Employment Opportunity Commission (EEOC) to give its two cents. The EEOC is already on record in other courts [arguing that Title VII covers sexual orientation discrimination](#). The agency has made the argument that sexual orientation is really just a form of sex discrimination because those who discriminate are making sex stereotypes that men should only be attracted to women and vice versa. The EEOC also has argued that sexual orientation discrimination is a form of associational discrimination – which is already a Title VII violation for other protected classes such as race – as homosexuals are being discriminated against based on who they choose as a partner. The EEOC's position on this important issue is already well established, and the fact that the Second Circuit sought out the agency's opinion could be an early sign that the Second Circuit will join the U.S. Court of Appeals for the Seventh Circuit in holding that Title VII prohibits discrimination based on sexual orientation.

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