Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII

Supreme Court Decisions on the Scope of Title VII's Sex Discrimination Provision

Oncale v. Sundowner Offshore Services, 523 U.S. 75 (1998). The Supreme Court held that same-sex harassment is sex discrimination under Title VII. Justice Scalia noted in the majority opinion that, while same-sex harassment was "assuredly not the principal evil Congress was concerned with when it enacted Title VII . . .statutory prohibitions often go beyond the principal evil [they were passed to combat] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed. Title VII prohibits 'discriminat[ion] . . . because of . . . sex.' [This] . . . must extend to [sex-based] discrimination of any kind that meets the statutory requirements." Id. at 79-80.

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989). The Supreme Court recognized that employment discrimination based on sex stereotypes (e.g., assumptions and/or expectations about how persons of a certain sex should dress, behave, etc.) is unlawful sex discrimination under Title VII. Price Waterhouse had denied Ann Hopkins a promotion in part because other partners at the firm felt that she did not act as woman should act. She was told, among other things, that she needed to "walk more femininely, talk more femininely, [and] dress more femininely" in order to secure a partnership. Id. at 230-31, 235. The Court found that this constituted evidence of sex discrimination as "[i]n the . . . context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender." Id. at 250. The Court further explained that Title VII's "because of sex" provision strikes at the "entire spectrum of disparate treatment of men and women resulting from sex stereotypes." *Id.* (quoting City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 707 n.13 (1978) (internal citation omitted)).

Federal Court Decisions Supporting Coverage for Transgender Individuals as Sex Discrimination

G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd., 822 F.3d 709 (4th Cir. Apr. 19, 2016).), mandate recalled and stayed, 136 S. Ct. 2442 (Aug. 3, 2016), cert. granted, 2016 WL 4565643 (Oct. 28, 2016). The district court dismissed a Title IX sex discrimination claim brought by a transgender boy high school student who was denied access to the boys' restroom. Reversing and remanding the case for further proceedings, the Court of Appeals held: "At the heart of this appeal is whether Title IX requires schools to provide transgender students access to restrooms congruent with their gender identity," and the district court failed to give appropriate deference to the U.S. Department of Education's interpretation of how its

own sex discrimination regulation should apply to transgender students. That interpretation was set forth in a January 15, 2015 letter from the Department's Office for Civil Rights, which advised: "When a school elects to separate or treat students differently on the basis of sex . . . a school generally must treat transgender students consistent with their gender identity." See also Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ., 2:16-CV-524, 2016 WL 6125403 (S.D. Ohio Oct. 20, 2016); Students v. U.S. Dep't of Educ., No. 16-cv-4945, 2016 WL 6134121 (N.D. Ill. Oct. 18, 2016).

Glenn v. Brumby, 663 F.3d 1312 (11th Cir. 2011). The plaintiff, a transgender female, brought a claim under 42 U.S.C. § 1983 alleging unlawful discrimination based on sex in violation of the Equal Protection Clause when she was terminated from her position with the Georgia General Assembly. Relying on Price Waterhouse and other Title VII precedent, the court concluded that the defendant discriminated against the plaintiff based on her sex by terminating her because she was transitioning from male to female. The court stated that a person is considered transgender "precisely because of the perception that his or her behavior transgresses gender stereotypes." As a result, there is "congruence" between discriminating against transgender individuals and discrimination on the basis of "gender-based behavioral norms." Because everyone is protected against discrimination based on sex stereotypes, such protections cannot be denied to transgender individuals. "The nature of the discrimination is the same; it may differ in degree but not in kind." The court further concluded that discrimination based on sex stereotypes is subject to heightened scrutiny under the Equal Protection Clause, and government termination of a transgender person for his or her gender nonconformity is unconstitutional sex discrimination. Although in this case the defendant asserted that it fired the plaintiff because of potential lawsuits if she used the women's restroom, the record showed that the plaintiff's office had only single-use unisex restrooms, and therefore there was no evidence that the defendant was actually motivated by litigation concerns about restroom use. The defendant provided no other justification for its action, and therefore, the plaintiff was entitled to summary judgment.

Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004). The plaintiff alleged that he was suspended based on sex after he began to express a more feminine appearance and notified his employer that he would eventually undergo a complete physical transformation from male to female. The court held that Title VII prohibits discrimination against transgender individuals based on gender stereotyping. The court determined that discrimination against an individual for gender-nonconforming behavior violates Title VII irrespective of the cause of the behavior. The court reasoned that the "narrow view" of the term "sex" in prior case law denying Title VII protection to transgender employees was "eviscerated" by Price Waterhouse, in which the Supreme Court held that Title VII protected a woman who failed to conform to social expectations about how women should look and behave.

Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005). Plaintiff, who "was a male-to-female transsexual who was living as a male while on duty but often lived as a woman off duty [and] had a reputation throughout the police department as a homosexual, bisexual or cross-dresser," alleged he was demoted because of his failure to conform to sex stereotypes. The court held that this stated a claim of sex discrimination under Title VII.

Rosa v. Parks W. Bank & Trust Co., 214 F.3d 213 (1st Cir. 2000). Citing Title VII case law, the court concluded that a transgender plaintiff, who was biologically male, stated a claim of sex discrimination under the Equal Credit Opportunity Act by alleging that he was denied a loan application because he was dressed in traditionally female attire.

Schwenck v. Hartford, 204 F.3d 1187, 1201-02 (9th Cir. 2000). Citing Title VII case law, the court concluded that a transgender woman stated a claim of sex discrimination under the

Gender Motivated Violence Act based on the perception that she was a "man who 'failed to act like one.'" The court noted that "the initial approach" taken in earlier federal appellate Title VII cases rejecting claims by transgender plaintiffs "has been overruled by the language and logic of Price Waterhouse."

Roberts v. Clark Cty. Sch. Dist., No. 2:15-cv-00388-JAD-PAL, 2016 WL 5843046 (D. Nev. Oct. 4, 2016). Expressly adopting the EEOC's holdings in Macy v. Dep't of Justice, EEOC Appeal No. 0120120821, 2012 WL 1435995 (Apr. 20, 2012), and Lusardi v. Dep't of the Army, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Apr. 1, 2015), the court ruled that plaintiff, a transgender school police officer, was subjected to sex discrimination in violation of Title VII when he was told by his employer that he could not use either the men's or women's bathroom at work. See also Mickens v. General Electric Co., 2016 WL 7015665 (W.D. Ky. Nov. 29, 2016) (denying employer's motion to dismiss similar Title VII claim).

Fabian v. Hospital of Central Connecticut, No. 3:12-cv-1154, 2016 WL 1089178 (D. Conn. Mar. 18, 2016). Plaintiff, an orthopedic surgeon, brought a Title VII sex discrimination claim alleging she was not hired because she disclosed her identity as a transgender woman who would begin work after transitioning to presenting as female. Analyzing Title VII's legislative history and case law in extensive detail, the court held that Price Waterhouse abrogates the narrow view of Title VII's plain language that previously excluded sex discrimination claims by transgender individuals, citing supportive rulings by the 6th, 9th, and 11th Circuits, as well as the EEOC's decision in Macy. See also Adkins v. City of New York, 2015 WL 7076956 (S.D.N.Y. Nov. 15, 2015) (allowing equal protection claim by transgender individual to proceed under 42 U.S.C. Section 1983).

EEOC v. R.G. & G.R. Harris Funeral Homes, Inc., 100 F. Supp. 3d 594, 2015 (E.D. Mich. 2015). Denying the employer's motion to dismiss a Title VII sex discrimination claim brought on behalf of a terminated funeral home employee who was a transgender woman, the court held: "[I]f the EEOC's complaint had alleged that the Funeral Home fired Stephens based solely upon Stephens's status as a transgender person, then this Court would agree with the Funeral Home that the EEOC's complaint fails to state a claim under Title VII. But the EEOC's complaint also asserts that the Funeral Home fired Stephens 'because Stephens did not conform to the [Funeral Home's] sex- or gender-based preferences, expectations, or stereotypes' (Compl. at ¶ 15). And binding Sixth Circuit precedent establishes that any person without - regard to labels such as transgender - can assert a sex-stereotyping gender-discrimination claim under Title VII, under a Price Waterhouse theory, if that person's failure to conform to sex stereotypes was the driving force behind the termination. This Court therefore concludes that the EEOC's complaint states a claim as to Stephens's termination."

Lewis v. High Point Regional Health System, 79 F. Supp. 588 (E.D.N.C. 2015). Plaintiff, a certified nursing assistant, alleged she was denied hire for several positions because of her transgender status. At the time of her interviews, she was anatomically male, and was undergoing hormone replacement therapy in preparation for sex reassignment surgery in the future. The district court denied the employer's motion to dismiss the case because the employer had argued only that sexual orientation was not covered under Title VII and sexual orientation and gender identity are two distinct concepts. The court therefore allowed plaintiff's transgender discrimination claim to proceed under Title VII.

Finkle v. Howard Cnty., Md., 122 Fair Empl. Prac. Cas. (BNA) 861, 2014 WL 1396386 (D. Md. Apr. 10, 2014). Denying the county's motion to dismiss or for summary judgment on a Title VII claim brought by a volunteer auxiliary police officer, the court ruled that the officer was an "employee" for Title VII purposes, and that her claim that she was discriminated against "because of her obvious transgendered status" raised a cognizable claim of sex

discrimination. The court reasoned: "[I]t would seem that any discrimination against transsexuals (as transsexuals) - individuals who, by definition, do not conform to gender stereotypes - is proscribed by Title VII's proscription of discrimination on the basis of sex as interpreted by Price Waterhouse. As Judge Robertson offered in Schroer v. Billington, 577 F. Supp. 2d 293 (D.D.C. 2008), '[u]ltimately I do not think it matters for purposes of Title VII liability whether the Library withdrew its offer of employment because it perceived Schroer to be an insufficiently masculine man, an insufficiently feminine woman, or an inherently gender-nonconforming transsexual.'"

Parris v. Keystone Foods, 2013 WL 4010288 (N.D. Ala. Aug. 7, 2013), appeal dismissed, No. 13-14495-D (11th Cir. Dec. 26, 2013). Plaintiff, a transgender female, alleged that she was discharged from her job at a chicken processing facility because of her "gender non-conformity." The district court, citing Glenn v. Brumby, recognized that the plaintiff's claims were covered by Title VII's sex discrimination prohibitions, but granted summary judgment to the employer on the ground that plaintiff's comparator evidence and evidence of discriminatory remarks by coworkers did not show that her discharge was motivated by her gender identity as opposed to the legitimate non-discriminatory reason proffered by the employer.

Radtke v. Miscellaneous Drivers & Helpers Union Local #638 Health, Welfare, Eye, & Dental Fund, 867 F. Supp. 2d 1023 (D. Minn. 2012). Assessing a claim under ERISA for wrongful termination of benefits to a legal spouse of a transgender individual, the court quoted the language from Smith v. City of Salem that the Supreme Court's decision in Price Waterhouse "eviscerated" the "narrow view" of "sex" articulated in earlier Title VII cases, and observed: "An individual's sex includes many components, including chromosomal, anatomical, hormonal, and reproductive elements, some of which could be ambiguous or in conflict within an individual."

Schroer v. Billington, 577 F. Supp. 2d 293 (D.D.C. 2008). The plaintiff, a transgender female, was offered a position as a terrorism research analyst before she had changed her name and begun presenting herself as a woman. After the plaintiff notified the employer that she was under a doctor's care for gender dysphoria and would be undergoing gender transition, the employer withdrew the offer, explaining that the plaintiff would not be a "good fit." The court stated that since the employer refused to hire the plaintiff because she planned to change her anatomical sex by undergoing sex reassignment surgery, the employer's decision was literally discrimination "because of ... sex." The court analogized the plaintiff's claim to one in which an employee is fired because she converted from Christianity to Judaism, even though the employer does not discriminate against Christians or Jews generally but only "converts." Since such an action would be a clear case of discrimination "because of religion," Title VII's prohibition of discrimination "because of sex" must correspondingly encompass discrimination because of a change of sex. The court concluded that decisions rejecting claims by transgender individuals "represent an elevation of 'judge-supposed legislative intent over clear statutory text,'" which is "no longer a tenable approach to statutory construction."

Lopez v. River Oaks Imaging & Diagnostic Group, Inc., 542 F. Supp. 2d 653 (S.D. Tex. 2008). The plaintiff alleged that she was subjected to sex discrimination when the employer rescinded its job offer after learning that she was transgender. Denying the employer's motion for summary judgment, the court concluded that the plaintiff's claim was actionable as sex discrimination under Title VII on the theory that she failed to comport with the employer's notions of how a male should look. A finder of fact might reasonably conclude that the employer's statement that the job offer was rescinded because she had "misrepresented"

herself as female reflected animus against individuals who do not conform to gender stereotypes.

Mitchell v. Axcan Scandipharm, Inc., No. 05-243, 2006 WL 456173, at *2 (W.D. Pa. 2006). Plaintiff alleged sex-based harassment and termination in violation of Title VII after the employer learned that plaintiff had been diagnosed with gender identity disorder and plaintiff began presenting at work as a female after having presented as a male during the first four years of employment. Denying the employer's motion to dismiss, the court held that because the complaint "included facts showing that his failure to conform to sex stereotypes of how a man should look and behave was the catalyst behind defendant's actions, plaintiff has sufficiently pleaded claims of gender discrimination."

Tronetti v. TLC HealthNet Lakeshore Hosp., No. 03-cv-375E, 2003 WL 22757935, at *4 (W.D.N.Y. 2003). Relying on the reasoning in Schwenck v. Hartford, 204 F.3d 1187, 1201-02 (9th Cir. 2000), the court ruled that plaintiff's sex discrimination claims of hostile work environment harassment and discriminatory discharge arising from her transition and sex reassignment surgery were actionable under Title VII, based on factual allegations that she was discriminated against for "failing to act like a man." See also Doe v. United Consumer Fin. Servs., No. 1:01-cv-1112, 2001 WL 34350174, at *2-5 (N.D. Ohio 2001).

Creed v. Family Express Corp., 101 Fair Empl. Prac. Cas. (BNA) 609, 2007 WL 2265630 (N.D. Ind. Aug. 3, 2007). The plaintiff, a transgender female, alleged facts permitting an inference that she was terminated because of gender stereotypes; specifically, that she was perceived by her employer to be a man while employed as a sales associate and was fired for refusing to present herself in a masculine way. See also Hunter v. United Parcel Serv., 697 F.3d 697 (8th Cir. 2012) (affirming summary judgment for the employer under both Title VII and state law, the court did not rule that such discrimination was not actionable under Title VII, but rather that there was no evidence that the prospective employer knew or perceived that plaintiff was transgender during the job interview, and therefore a prima facie case of sex discrimination was not established).

Miles v. New York Univ., 979 F. Supp. 248, 249-50 (S.D.N.Y. 1997). Noting that the phrase "on the basis of sex" in Title IX is interpreted in the same manner as similar language in Title VII, the court held that a transgender female student could proceed with a claim that she was sexually harassed "on the basis of sex" in violation of Title IX.

Federal Court Decisions Supporting Coverage of Sexual Orientation-Related Discrimination as Sex Discrimination

Muhammad v. Caterpillar Inc., 767 F.3d 694 (7th Cir. Sept. 9, 2014, as amended on denial of rehearing, Oct. 16, 2014). Plaintiff alleged that hostile work environment harassment relating to his perceived sexual orientation was sex-based harassment in violation of Title VII. Affirming the district court's grant of summary judgment to the employer, the appellate court ruled that the employer took prompt remedial action once on notice of the harassment. As urged by the EEOC in an amicus brief filed in connection with plaintiff's petition for rehearing, the court denied the petition but amended its original decision to delete language that had stated sexual orientation-related discrimination claims are not actionable under Title VII.

Latta v. Otter, 771 F.3d 456 (9th Cir. 2014). The 9th Circuit Court of Appeals held that statutes and constitutional amendments in Idaho and Nevada prohibiting same-sex marriages and refusing to recognize same-sex marriages validly performed in other states violated the Equal Protection Clause. The opinion of the court held that the laws were invalid as they discriminated on the basis of sexual orientation without sufficient justification. It also noted that "the constitutional restraints the Supreme Court has long imposed on sex-role stereotyping . .

. may provide another potentially persuasive answer to defendant's theory." Id. at 474. A concurrence by Judge Berzon focused exclusively on the sex discrimination argument. Her opinion stated that she would have found that the Idaho and Nevada laws unlawfully discriminated on the basis of sex as, among other reasons, "the social exclusion and state discrimination against lesbian, gay, bisexual, and transgender people reflects, in large part, disapproval of their nonconformity with gender-based expectations." Id. at 495.

Boutillier v. Hartford Public Schs., No. 3:13-cv-01303, 2016 WL 6818348 (D. Conn. Nov. 17, 2016). Plaintiff, an elementary school teacher, alleged that discrimination against her based on her sexual orientation violated Title VII's sex discrimination prohibition. The court denied the employer's motion for summary judgment, citing the pendency of the issue before the circuit's appellate court and mixed circuit precedent, as well as arguments it found persuasive in support of plaintiff's claim. The court reasoned that Title VII's plain language as well as precedent supported plaintiff's claim, concluding that "straightforward statutory interpretation and logic dictate that sexual orientation cannot be extricated from sex; the two are necessarily intertwined in a manner that, when viewed under the Title VII paradigm set forth by the Supreme Court, place sexual orientation discrimination within the penumbra of sex discrimination." See also Boutillier v. Hartford Public Schools, 2014 WL 4794527 (D. Conn. Sept. 25, 2014) (denying employer's motion to dismiss).

EEOC v. Scott Medical Health Center, P.C., __ F. Supp. 3d __, 2016 WL 6569233 (W.D. Pa. Nov. 4, 2016). The Commission alleged that harassment and constructive discharge based on the sexual orientation of a teleworker was actionable as sex discrimination under Title VII. Denying the employer's motion to dismiss, the court held that "Title VII's 'because of sex' provision prohibits discrimination on the basis of sexual orientation." The court explained: "There is no more obvious form of sex stereotyping than making a determination that a person should conform to heterosexuality. As the EEOC states, "[d]iscriminating against a person because of the sex of that person's romantic partner necessarily involves stereotypes about 'proper' roles in sexual relationship-that men are and should only be sexually attracted to women, not men." The court stated that in its view, a line between sex discrimination and sexual orientation discrimination is "a distinction without a difference. Forcing an employee to fit into a gendered expectation-whether that expectation involves physical traits, clothing, mannerisms or sexual attraction-constitutes sex stereotyping and, under Price Waterhouse, violates Title VII." The court concluded that such discrimination, "based upon nothing more than the aggressor's view of what it means to be a man or a woman, is exactly the evil Title VII was designed to eradicate."

Winstead v. Lafayette Cty. Bd. of Cty. Comm'rs, __ F. Supp. 3d ___, 2016 WL 3440601 (N.D. Fla. June 20, 2016). Employee of county emergency medical services department brought Title VII sex discrimination claim alleging discrimination based on sexual orientation or perceived sexual orientation. Denying the employer's motion to dismiss, the court explained that it found persuasive the sex stereotyping rationale articulated in the EEOC's decision in Baldwin v. Dep't of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015), and observed: "To hold that Title VII's prohibition on discrimination 'because of sex' includes a prohibition on discrimination based on an employee's homosexuality or bisexuality or heterosexuality does not require judicial activism or tortured statutory construction. It requires close attention to the text of Title VII, common sense, and an understanding that '[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." (quoting Manhart, 435 U.S. at 707 n.13).

Christiansen v. Omnicom,Group, Inc., 167 F. Supp. 3d 598 (S.D.N.Y. 2016), appeal pending. Holding that it was bound to apply circuit precedent disallowing Title VII sex discrimination

claims based on sexual orientation, the court nevertheless included in its decision an extensive critique of that precedent and others, observing: "In light of the EEOC's recent [Baldwin] decision on Title VII's scope, and the demonstrated impracticality of considering sexual orientation discrimination as categorically different from sexual stereotyping, one might reasonably ask - and, lest there be any doubt, this Court is asking - whether that line should be erased."

Videckis v. Pepperdine University, 2015 WL 8916764 (C.D.Cal. Dec. 15, 2015). Pepperdine University filed a renewed motion to dismiss plaintiff's Title IX claim, stating that the plaintiff alleged sexual orientation discrimination and not sex discrimination. The district court denied the motion, explicitly holding that "sexual orientation discrimination is a form of sex or gender discrimination." The court cited with approval the Commission's decision in Baldwin v. Dep't of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015), explaining that sexual orientation discrimination is sex discrimination "because it involved treatment that would not have occurred but for the individual's sex; because it was based on the sex of the person(s) the individual associates with; and/or because it was premised on the fundamental sex stereotype, norm, or expectation that individuals should be attracted only to those of the opposite sex."

Isaacs v. Felder, 2015 WL 6560655 (M.D. Ala. Oct.29, 2015). Granting the employer's motion for summary judgment on plaintiff's Title VII claim due to insufficient evidence of discriminatory intent on the facts of the case, the court nevertheless explicitly rejected arguments that sexual orientation discrimination cannot be challenged under Title VII: "This court agrees instead with the view of the Equal Employment Opportunity Commission that claims of sexual orientation-based discrimination are cognizable under Title VII. In [Baldwin], the Commission explains persuasively why 'an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII' … Particularly compelling is its reliance on Eleventh Circuit precedent [prohibiting discrimination based on a protected characteristic because of a personal association]. Cf. Parr v. Woodmen of the World Life Ins. Co., 791 F.2d 888, 892 (11th Cir. 1986) ('Where a plaintiff claims discrimination based upon an interracial marriage or association, he alleges, by definition, that he has been discriminated against because of his race [in violation of Title VII].').' ….To the extent that sexual orientation discrimination occurs not because of the targeted individual's romantic or sexual attraction to or involvement with people of the same sex, but rather based on her or his perceived deviations from 'heterosexually defined gender norms,' this, too, is sex discrimination, of the gender-stereotyping variety …. See also Latta v. Otter, 771 F.3d 456, 486 (9th Cir. 2014) (Berzon, J., concurring) ('The notion underlying the Supreme Court's anti-stereotyping doctrine in both Fourteenth Amendment and Title VII cases is simple, but compelling: '[n]obody should be forced into a predetermined role on account of sex,' or punished for failing to conform to prescriptive expectations of what behavior is appropriate for one's gender. See Ruth Bader Ginsburg, 'Gender and the Constitution,' 44 U. Cin. L.Rev. 1, 1 (1975)."

Boutillier v. Hartford Public Schools, 2014 WL 4794527 (D. Conn. Sept. 25, 2014). The court denied the employer's motion to dismiss a Title VII sex discrimination claim alleging adverse employment actions occurring after management learned of her sexual orientation. The allegation that plaintiff was "subjected to sexual stereotyping during her employment on the basis of her sexual orientation" was held actionable as sex discrimination under Title VII because it sets forth "a plausible claim that she was discriminated against based on her non-conforming gender behavior."

Hall v. BNSF Railway Co., 2014 WL 4719007 (W.D. Wash. Sept. 22, 2014). Denying an employer's motion to dismiss a Title VII sex discrimination claim challenging the employer's

policy of providing health insurance coverage for employees' legally married opposite-sex spouses but not same-sex spouses, the court found that the allegations were sufficient to allege discrimination based on the sex of the employee.

Terveer v. Billington, 2014 WL 1280301 (D.D.C. Mar. 31, 2014). Denying the employer's motion to dismiss the plaintiff's Title VII sex discrimination claims for denial of promotion and harassment because of non-conformance with sex stereotypes, the court found sufficient the plaintiff's allegations that he is "a homosexual male whose sexual orientation is not consistent with the Defendant's perception of acceptable gender roles," that his "status as a homosexual male did not conform to the Defendant's gender stereotypes associated with men [at his workplace]," and "his orientation as homosexual had removed him from [his supervisor's] preconceived definition of male."

Centola v. Potter, 183 F. Supp. 2d 403 (D. Mass. 2002). In dicta, the court explained: "Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact, stereotypes about homosexuality are directly related to our stereotype about the proper roles of men and women."

Koren v. Ohio Bell Telephone Co., 2012 WL 3484825 (N.D. Ohio Aug. 14, 2012). Denying defendant's motion for summary judgment where plaintiff alleged his supervisor discriminated against him based on sex stereotypes because he is married to a man and took his husband's last name, the court held: "That *is* a claim of discrimination because of sex." (emphasis in original).

Heller v. Columbia Edgewater Country Club, 195 F. Supp. 2d 1212, 1224 (D. Or. 2002). In a Title VII sex harassment case brought by a lesbian employee who was subjected to negative comments about her sex life, the court stated that the belief that men or women should only be attracted to or date persons of the opposite sex constitutes a gender stereotype. "If an employer subjected a heterosexual employee to the sort of abuse allegedly endured by Heller-including numerous unwanted offensive comments regarding her sex life-the evidence would be sufficient to state a claim for violation of Title VII. The result should not differ simply because the victim of the harassment is homosexual." In this case, the court held, a jury could find that [the manager] repeatedly harassed (and ultimately discharged) Heller because Heller did not conform to Cagle's stereotype of how a woman ought to behave. Heller is attracted to and dates other women, whereas Cagle believes that a woman should be attracted to and date only men."

Strong v. Grambling State University, 2015 WL 1401335 (W.D. La. Mar. 25, 2015). The court analyzed on the merits plaintiff's claim that he was subject to sex discrimination in violation of Title VII based on his "gender status as heterosexual" because "women and homosexuals earn higher salaries than he does and receive pay increases where he does not." Granting the employer's motion for summary judgment, the court found there was insufficient evidence to support an inference of discriminatory intent.