MEMORANDUM

From: Williams Institute
Date: September 2009
RE: Illinois – Sexual Orientation and Gender Identity Law and Documentation of Discrimination

I. OVERVIEW

Since 2006, an Illinois state law has prohibited employment discrimination based on sexual orientation, a term which the statute defines to include “gender-related identity, whether or not traditionally associated with the person’s designated sex at birth.”¹ However, notwithstanding this statute and several municipal-level anti-discrimination laws that cover sexual orientation and/or gender identity, there is a pattern of unconstitutional employment discrimination in public sector workplaces in the state, both before and after enactment of the 2006 provision.

Documented examples of discrimination based on sexual orientation or gender identity by state and local government employers include:

• Plaintiff sued the Illinois Gaming Board, alleging that he was denied a promotion in 2004 because of his sexual orientation, thereby depriving him of his federally protected right to equal protection.² Plaintiff never disclosed his sexual orientation at work, and no one at work ever asked about it, but plaintiff cited several incidents which formed the basis of his belief that his employers were aware of his sexual orientation. In one incident, a co-worker cut out an article in which a homosexual police applicant received a job, and wrote on the top of the article that the “good guys” were not going to get the job – implying, plaintiff argued, that only homosexuals would receive consideration because of their sexual orientation. He also overheard someone saying, “Don’t worry, help is on the way,” which he interpreted as meaning he would soon be replaced. In another incident, he had a conversation with a co-worker in which he asked if the co-worker knew whether shoes thrown over a telephone line outside a house meant that drugs were sold there, to which the co-worker responded: “I don’t know. Do you know what a rainbow flag mean [sic] when it’s on a bar window? … That means it’s a gay bar.” Finally, a co-worker referred to an openly gay actor from Star Trek as a “faggot.”

¹ Illinois Human Rights Act, 775 ILL. COMP. STAT. 5/1-102.
• In 2008, a fire department paramedic reported that he had experienced harassment based on his sexual orientation. Co-workers made comments such as, “I wish all fags would die of AIDS.” The fire chief said to him: “I want to give you some advice. You need to tone it down a bit.” When the paramedic asked if he was being too loud, or if the chief meant he should “gay it down” and the chief responded, “I can't say that, but I'm going to tell you to tone it down.” The chief added, “any other chief would find you unfit for duty” and told the paramedic to “change the way you are.” In addition, the paramedic’s bedding was removed from the firehouse sleeping quarters and his car window was broken in the department’s parking lot. The harassment became so bad that he would sleep in the ambulance during his downtime to avoid his co-workers. He believed that he was being set up for termination through an investigation of a false positive drug test that would not have been handled as it was if he were not gay.3

• In 2008, a public school teacher reported that he was repeatedly harassed at work because he was perceived to be gay. Students wrote on the tables in his classroom that “[Caller D] is a fag” and included similar derogatory phrases in textbooks in his class, among other things. The teacher made complaints to the administration about this harassment, but received no response. The teacher is perceived to be gay but is heterosexual.4

• In 2008, a gay professor at an Illinois community college was subjected to a hostile environment because of his sexual orientation.5

• In 2008, a lesbian public school teacher was subjected to a hostile environment because of her sexual orientation.6

• In 2007, a corrections officer reported that he was being harassed at work based on his sexual orientation. A fellow officer repeatedly referred to him as a “motherfucking faggot” in front of other officers and inmates. The officer who did this was not suspended, even though two employees who had used the “N-word” around the same time had been immediately terminated. After the corrections officer commenced a union grievance, shift commanders told him to “leave it alone” and warned him that he was “playing with fire.” Thereafter, even though he was qualified for a promotion, the position was awarded to a heterosexual candidate from outside of the department with much less experience

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3 E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).
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than he had. The corrections officer eventually resigned because of the harassment.  

- In 2007, a transgender city agency chief naturalist was fired because of her gender identity.

- A gay male administrator sued the Suburban Bus Division of the Regional Transportation Authority, claiming that he was subjected to adverse employment actions and hostile work environment due to his sexual orientation. The court found that the evidence of homophobic comments and jokes was insufficient to avoid summary judgment, because it failed to show harassment that is sufficiently severe or pervasive. (“First, the comments were few, and very far between. Paquet claims that there were between 18 and 36 total instances in which an offensive joke or comment was uttered, over the course of approximately twelve years. [citation omitted]. More importantly, none of the jokes or comments were ever directed at Paquet personally.”) The court also found that plaintiff was not retaliated against, in violation of his First Amendment rights, when efforts were made to remove him from training session after he asked leader to comment on applicability to homosexuals of a city anti-discrimination ordinance.

- Plaintiff Jeffrey Cash, a nurse’s aid in the Murray Development Center, a home for developmentally disabled people in Centralia, Illinois, sued the state agency for discrimination suffered because he was perceived to be gay. In the summer of 1995, plaintiff invited a fellow employee, Donny Hodge, for a Saturday fishing trip on his boat. They spent the day fishing, then returned to Hodge’s house. Since Cash's wife and children were away visiting grandparents for the weekend, Hodge invited Cash to stay overnight, and they continued their fishing trip on Sunday. Hodge is an openly gay man, and was known as being gay in their workplace. Cash began to take flak from a group of female co-workers about his perceived failure to emerge from the closet and embrace his homosexuality. Cash’s tormentors made the next year of his life at work miserable. They laughed at Cash while simulating fellatio or male masturbation, called him a “he/she” or “the evil one,” and bared their breasts and shook them at him while laughing. One woman even rubbed her bare breasts against Cash’s arm following a union meeting. Over time, Cash became short-tempered, paranoid, and depressed. He eventually sought psychiatric counseling, which both he and his therapists say stemmed from his stressful working conditions. The court rejected plaintiff’s hostile environment claim, finding that the harassment was insufficiently pervasive to state a Title VII claim, and that it was not directed at Cash “because of” sex.

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10 Cash v. Ill. Div. of Mental Health, 209 F.3d 695 (7th Cir. 2000).
• Plaintiff James Shermer, an employee of the Illinois Department of Transportation, asserted that he had been subjected to sexually offensive remarks by his male supervisor, who perceived him as gay and ridiculed him for having sex with other men.\textsuperscript{11} (Shermer did not state for the record whether he is in fact gay.) Shermer sued under Title VII, alleging sexual harassment that had the effect of creating a hostile environment. The court ruled for defendant, finding that “all the evidence suggests Plaintiff was harassed not because of his gender but because of his sexual orientation....[D]iscrimination based on sexual orientation, real or perceived, however, is simply not actionable under Title VII.”

• A former probationary city police officer brought action against the superintendent of the Chicago Police Department under the Illinois Human Rights Act and Chicago’s human rights ordinance, alleging, among other claims, discrimination on the basis of sexual orientation.\textsuperscript{12} Flynn was terminated after four days during the probationary period following his being hired as a police officer. The state circuit court granted the city’s motion to dismiss. With regard to the claims related to sexual orientation, the appellate court affirmed the judgment on the basis that Chicago’s Commission on Human Relations had exclusive jurisdiction over claims arising under the ordinance, and Flynn failed to exhaust his remedies under the ordinance before bringing the claim to the circuit court. Furthermore, the appellate court concluded that because nothing in the Human Rights Act at that time prohibited discrimination based on sexual orientation, the court lacked jurisdiction over that claim.

• Plaintiffs, two 16-year-old twin brothers who were subject to “a relentless campaign of harassment by their male co-workers,” sued the city as employer, alleging intentional sex discrimination.\textsuperscript{13} Although the district court granted summary judgment in favor of the Defendants, holding that victims of same-sex sexual harassment may not claim discrimination because of sex under Title VII, the Seventh Circuit reached the opposite conclusion. The Plaintiffs alleged that their harassment included being called “queer” and “fag,” comments such as, “[a]re you a boy or a girl?” and talk of “being taken ‘out to the woods’” for sexual purposes. One Plaintiff wore an earring and was subject to more ridicule than his brother, the second Plaintiff, who was overweight and was once asked whether his brother had passed a case of poison ivy to him through anal intercourse. The verbal taunting turned physical when a co-worker grabbed one of the Plaintiff’s genitals to determine “if he was a girl or a boy.” When the Plaintiffs failed to return to work, supervisors terminated their employment. The Seventh Circuit noted that “a homophobic epithet like ‘fag,’...may be as much of a disparagement of a man’s perceived effeminate qualities as it is of his perceived sexual orientation.” The court found that a “because of” nexus between the allegedly

\textsuperscript{13} Doe v. City of Belleville, 119 F.3d 563 (7th Cir. 1997), vacated, 523 U.S. 1001 (1998).

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and policies involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments against LGBT people. Part IV discusses state laws and policies outside the employment context.

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II. SEXUAL ORIENTATION AND GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

1. Scope of Statute

As of January 1, 2006, the Illinois Human Rights Act ("IHRA") prohibits private and public employers from discrimination based on "sexual orientation," which is defined as "actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person’s designated sex at birth." This definition thus can be interpreted to protect employees from discrimination on the basis of gender stereotyping and gender identity. There have not yet been any reported decisions of cases arising under the revised statute.

2. Enforcement & Remedies

The Illinois Department of Human Rights is the agency charged with enforcing the IHRA. Based on precedents of cases brought under the IHRA prior to the inclusion of sexual orientation, where the claimant brings a claim in an administrative proceeding, a three-part analysis controls the employment discrimination claim. Under this three-part analysis the employee must: (i) establish a prima facie case of employment discrimination by showing the employee was discriminated against solely based on his or her protected status; (ii) if a prima facie case is established, the burden shifts to the employer to "articulate, not prove’ a legitimate nondiscriminatory reason for [the employer’s] decision [to terminate the employee from their job position];” and (iii) “when the employer carries that burden of production, the presumption of discrimination falls, and the [employee] must then prove by a preponderance of the evidence that the employer’s articulated reason was not true but pretextual.”

If the claimant successfully proves his or her sexual orientation employment discrimination claim, the remedies allowed are: “(i) actual damages; (ii) back pay; (iii) perquisites; (iv) interest on damages; (v) damages for emotional distress; (vi) reinstatement; (vii) promotion; (viii) membership in apprenticeship or labor organization

18 Zaderaka, 131 Ill.2d at 179. See also Zunino v. Cook County Com’n on Human Rights, 289 Ill.App.3d 133, 137 (Ill. App. Ct. 1 Dist. 1997) (citing Zaderaka v. Illinois Human Rights Com’n, 131 Ill.2d 172, 179 (Ill. 1989)).
or job training programs; (ix) an order against the employer from violating the Act, and (x) attorney’s fees and costs.”19

Additionally, the Illinois Attorney General is permitted to enforce the Act by bringing a sexual orientation employment discrimination action on behalf of the people of Illinois in state court.20 If the claim is successfully litigated, the remedy is limited to only equitable relief and a fine to the employer not to exceed $50,000.21

B. Attempts to Enact State Legislation

An earlier attempt to reform the Illinois Human Rights Act included testimony indicating that between 30 and 40 percent of gays and lesbians reported concealing their sexual orientation to avoid discrimination.22

In 1999, the Illinois legislature rejected a bill23 that would have prohibited employment discrimination based on sexual orientation. State Rep. Cal Skinner, who voted against the bill, told a reporter that to pass it “would be enabling an addiction” that kills people by transmitting AIDS.24

C. Executive Orders, State Government Personnel Regulations & Attorney General Opinions

1. Executive Orders


2. State Government Personnel Regulations

Research uncovered a number of school districts with anti-discrimination employment, recruitment or contracting policies that include sexual orientation. Many of the same school districts also have student non-harassment policies that include harassment based on sexual orientation. It is not clear, however, whether such policies, by referencing sexual orientation, intended to protect against discrimination or harassment based on gender identity or gender stereotype.

3. Attorney General Opinions

20 775 ILL. COMP. STAT. 5/10-104 (2007).
22 David Heckelman, Committee OKs bill to ban discrimination against homosexuals, CHI. L. DAILY BULL. (Mar. 24, 1993), at 3.
24 PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 164 (2000 ed.).
None.

D. Local Legislation

The following municipalities in Illinois specifically prohibit employment discrimination on the basis of sexual orientation and/or gender identity: the Cities of Champaign, Urbana, Evanston, DeKalb, Decatur, Chicago, and Cook County.

In 1996, the town council of Normal, Illinois voted 5-2 against adding “sexual orientation” to their municipal anti-discrimination ordinance. In 2001, the council changed their minds; the Normal code now includes sexual orientation among the categories included in its equal employment opportunity policy and protected from discrimination.

E. Occupational Licensing Requirements

Research did not uncover any published judicial opinions addressing instances in which licensing regulations were applied based on sexual orientation or gender expression.

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29 DEKALB MUN. CODE § 49-02 (1998).
30 DECATUR MUN. CODE ch. 28 (2002).
III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE AND LOCAL GOVERNMENTS

A. Case Law

1. State and Local Government Employees


Hamlin, an interim shift supervisor with the Illinois Gaming Board, filed suit in an Illinois district court against his supervisors in their official capacities, alleging that he was denied a promotion because of his sexual orientation, thereby depriving him of his federally protected right to equal protection.

Hamlin never disclosed his sexual orientation at work, and no one at work ever asked about it. In support of his argument, Hamlin cited several incidents, which formed the basis of his belief that his employers were aware of his sexual orientation. In one incident, a co-worker cut out an article in which a homosexual police applicant received a job, and wrote on the top of the article that the “good guys” were not going to get the job – implying, Hamlin argued, that only homosexuals would receive consideration because of their sexual orientation. Hamlin also overheard someone saying, “Don’t worry, help is on the way,” which Hamlin interpreted as meaning he would soon be replaced. In another incident, Hamlin had a conversation with a co-worker in which Hamlin asked if the co-worker knew whether shoes thrown over a telephone line outside a house meant that drugs were sold there, to which the co-worker responded: “I don’t know. Do you know what a rainbow flag mean [sic] when it’s on a bar window? … That means it’s a gay bar.” Finally, a co-worker referred to an openly gay actor from Star Trek as a “faggot.” When applications were taken to fill the permanent position, another applicant was chosen, and Hamlin alleged that due to his sexual orientation, his competitor was “pushed through.”

In considering Hamlin’s equal protection claim on summary judgment, the District Court required Hamlin to show: (1) that the defendants had treated him differently from other similarly-situated individuals; (2) that the defendants had intentionally treated him differently because of his class membership (i.e., homosexual status); and (3) that the allegedly proscribed conduct was not rationally related to a legitimate government interest (rational basis review, since, in the court’s estimation, homosexual status was not afforded any heightened scrutiny).

The court concluded that Hamlin had not established the second element of his equal protection claim (that the defendants had intentionally treated him differently because of his sexual orientation) because “[a] party cannot have any intent to discriminate against a member of a class if they lack knowledge of the individual’s class membership.” In the instant case, the court determined that, on the facts adduced, Hamlin had not established a prima facie case of discrimination because he could not prove, based on the facts adduced, that any defendant—let alone any defendant with
decision-making authority—actually knew of his sexual orientation. Thus, the District Court granted summary judgment in favor of the defendants.35

Cash v. Ill. Div. of Mental Health, 209 F.3d 695 (7th Cir. 2000).

Jeffrey Cash claimed he was subject to hostile environment harassment because his co-workers thought he was a closeted gay man. Cash was hired as a nurse’s aid in the Murray Development Center, a home for developmentally disabled people in Centralia, Illinois. For seven years, there were no problems with his employment or his life; he owned his own home, where he lived with his wife and children. In the summer of 1995, he invited a fellow employee, Donny Hodge, for a Saturday fishing trip on his boat. They spent the entire day fishing, then returned to Hodge’s house. Since Cash’s wife and children were away visiting grandparents for the weekend, Hodge invited Cash to stay overnight, and they continued their fishing trip on Sunday. Hodge is an openly gay man, and was known as being gay in their workplace. Cash began to take flak from a group of female co-workers about his perceived failure to emerge from the closet and embrace his homosexuality. Cash’s tormentors made the next year of his life at work miserable. They laughed at Cash while simulating fellatio or male masturbation, called him a “he/she” or “the evil one,” and bared their breasts and shook them at him while laughing. One woman even rubbed her bare breasts against Cash’s arm following a union meeting. Over time, Cash became short-tempered, paranoid, and depressed. He eventually sought psychiatric counseling, which both he and his therapists say stemmed from his stressful working conditions. Cash filed suit in federal court against his employer, claiming he endured hostile environment harassment, in violation of Title VII. After trial, the court ruled against Cash, finding that the employer acted appropriately in response to Cash’s complaints about harassment, that the harassment in any event was insufficiently pervasive to state a Title VII claim, and that it was not directed at Cash “because of” sex. On appeal to the Seventh Circuit, the court held that Cash’s motion for a new trial was untimely and affirmed the ruling below.36


Plaintiff John Paquet, a transit administrator who self-identified as homosexual, sued his employer, Pace, the Suburban Bus Division of the Regional Transportation Authority, claiming that he was subjected to adverse employment actions and hostile work environment due to his sexual orientation. The employer moved to dismiss. Paquet made two claims. In Count I, Paquet alleged that the defendants retaliated against him for engaging in certain speech concerning homosexuality and homosexual rights issues, in violation of the First Amendment. In Count II, Paquet alleged that the defendants violated the Equal Protection Clause of the Fourteenth Amendment by intentionally discriminating against him based on his status as a homosexual. The District Court granted defendants’ motion for summary judgment on all counts, holding that: (1) employee’s equal protection rights were not violated when he was transferred and reduced one pay grade; (2) employee was not subjected to hostile work environment

36 Cash v. Ill. Div. of Mental Health, 209 F.3d 695 (7th Cir. 2000).
based on nonspecific homophobic comments and investigation of his possible involvement in disruptive e-mails; and (3) employee was not retaliated against in violation of his First Amendment rights when efforts were made to remove him from a training session after he asked leader to comment on the applicability to homosexuals of a city anti-discrimination ordinance.

Paquet's homosexuality (or at least the likelihood that he was homosexual) was revealed in a memo sent by Paquet to one of his supervisors in March 1997, requesting that Pace adopt a policy of providing insurance benefits to homosexual domestic partners in the same way that it does for married spouses. Although Paquet did not make a point of discussing his homosexuality at Pace, there were at least some Pace employees who knew of his homosexual orientation even before this memo was sent.

The court held that Paquet failed to create sufficient evidence from which a reasonable jury could conclude that Pace’s reasons for the transfer and demotion were pretextual, and that therefore Pace was entitled to summary judgment on Paquet’s disparate treatment claim. The court further concluded that Paquet’s proffered evidence was insufficient to create a triable issue of fact as to whether he was subjected to a hostile environment because he is homosexual. The court found that the evidence of homophobic comments and jokes was insufficient to avoid summary judgment, because it failed to show harassment that is sufficiently severe or pervasive. (“First, the comments were few, and very far between. Paquet claims that there were between 18 and 36 total instances in which an offensive joke or comment was uttered, over the course of approximately twelve years. [citation omitted] More importantly, none of the jokes or comments were ever directed at Paquet personally.”) The Court also granted summary judgment on the First Amendment claim, finding that Pace had legitimate reasons for trying to avoid further disruption in the class.37


A former probationary city police officer brought action against the superintendent of the Chicago Police Department under the Illinois Human Rights Act and Chicago’s human rights ordinance, alleging, among other claims, discrimination on the basis of sexual orientation. Flynn, was hired as a police officer and terminated after four days during the probationary period. The state circuit court granted the city’s motion to dismiss. With regard to the claims related to sexual orientation, the appellate court affirmed the judgment on the basis that Chicago’s Commission on Human Relations had exclusive jurisdiction over claims arising under the ordinance, and Flynn had failed to exhaust his remedies under the ordinance before bringing the claim to the circuit court. Furthermore, the appellate court concluded that because nothing in the Human Rights Act at that time prohibited discrimination based on sexual orientation, the court lacked jurisdiction over that claim.


Plaintiffs, two 16-year-old twin brothers who were subject to “a relentless campaign of harassment by their male co-workers,” sued the city alleging intentional sex discrimination. Although the district court granted summary judgment in favor of the Defendants, holding that victims of same-sex sexual harassment may not claim discrimination because of sex under Title VII, the Seventh Circuit reached the opposite conclusion. The Plaintiffs alleged that their harassment included being called “queer” and “fag,” comments such as, “[a]re you a boy or a girl?” and talk of “being taken ‘out to the woods’” for sexual purposes. One Plaintiff wore an earring and was subject to more ridicule than his brother, the second Plaintiff, who was overweight and was once asked whether his brother had passed a case of poison ivy to him through anal intercourse. The verbal taunting turned physical when a co-worker grabbed one of the Plaintiff’s genitals to determine “if he was a girl or a boy.” When the Plaintiffs failed to return to work, supervisors terminated their employment. The Seventh Circuit noted that,

> [w]hen the harasser sets out to harass a female employee using names, threats, and physical contact that are unmistakably gender-based, he ensures that the work environment becomes hostile to her as a woman – in other words, that the workplace is hostile ‘because of her sex.’ Regardless of why the harasser has targeted the woman, her gender has become inextricably intertwined with the harassment.

To the Seventh Circuit, “a homophobic epithet like ‘fag,’ … may be as much of a disparagement of a man’s perceived effeminate qualities as it is of his perceived sexual orientation.” In the instant case, the Seventh Circuit found that a “because of” nexus between the allegedly proscribed conduct and the victim’s gender could be inferred “from the harassers’ evident belief that in wearing an earring, [the brother] did not conform to male standards.” In addition, the court found that the sexual orientation of the harasser is irrelevant.


Plaintiff James Shermer worked for the Illinois Department of Transportation (IDOT) as part of an all-male crew. He claimed to have been subjected to sexually offensive remarks by his male supervisor, who perceived him as gay and ridiculed him for having sex with other men. (Shermer did not state for the record whether he is in fact gay.) Shermer sued under Title VII, alleging sexual harassment that had the effect of creating a hostile environment. The defense moved for summary judgment, arguing that same-sex harassment is not actionable under Title VII. The District Court denied the motion, ruling that Title VII does prohibit same-sex harassment.

The defense next moved for reconsideration, arguing that there was no evidence that the defendant discriminated against the plaintiff on the basis of his gender. Specifically, Defendant maintains that Plaintiff worked on an all male crew and that “[t]here is not, and cannot be, any evidence that female workers were treated differently.” Defendant also notes that there is no evidence suggesting any IDOT employee did anything more than make comments about Plaintiff engaging in sexual activity with other
men. According to Plaintiff, the hostile environment was created solely because he is a man. In particular, Plaintiff asserts that “[i]n the case at bar the conduct at issue although offensive becomes sufficiently egregious to alter adversely the conditions of his employment not merely because it is conduct of a sexual nature, but rather because of the sex of the Plaintiff since it alludes to the Plaintiff engaging in sexual acts with individuals of his own sex.”

The Court granted defendants’ motion for reconsideration, finding that “all the evidence suggests Plaintiff was harassed not because of his gender but because of his sexual orientation....Plaintiff has failed to present any evidence, beyond mere speculation, that he would have been discriminated against if Trees would have perceived him as a heterosexual. Conversely, and more importantly, Plaintiff has failed to present any evidence that he was discriminated against because he was a man. Plaintiff maintains that the harassment was sufficiently egregious because it alluded to him engaging in sexual acts with other men....Discrimination based on sexual orientation, real or perceived, however, is simply not actionable under Title VII.”

2. **Private Employers**


The Illinois Human Rights Commission filed a complaint on behalf of a gay male employee who was sexually harassed by another gay male, alleging hostile environment on the basis that the employer did not respond properly to the harassing conduct. Statements were made by the employees’ supervisor to both employees stating they should both “go home and have sex,” “kiss and make up,” and “be married.” The Court concluded that the statements proved the supervisor’s knowledge of the sexual nature of the hostility between the two co-workers and displayed a “flippant attitude” toward the situation, which perpetuated a hostile work environment.


This is a case in which a government entity in Illinois attempted to address employment discrimination based on sexual orientation and was sued by a private party. An employment tester filed a claim with the Chicago Commission on Human Relations after being denied employment with the local Boy Scouts organization because of his homosexuality. The Commission issued an injunction prohibiting the Boy Scouts from considering the sexual orientation of the applicant, and issued a fine and damages to the tester. The Circuit Court determined that the tester lacked standing and vacated the award of damages, but affirmed the injunction and fine. The Appellate Court vacated the Commission’s order in its entirety and remanded the case back to the Commission for further findings. The Appellate Court stated that “the Commission should designate a representative list of nonexpressive positions within the Boy Scouts where the presence

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of a homosexual would not ‘derogate from [Boy Scouts’] expressive message,’” and make a factual finding as to whether the tester was seeking a nonexpressive position with the Boy Scouts.

B. Administrative Complaints

C. Other Documented Examples of Discrimination

Municipal Fire Department

In 2008, a fire department paramedic reported that he had experienced harassment based on his sexual orientation. Co-workers made comments such as “I wish all fags would die of AIDS.” The fire chief said to him: “I want to give you some advice. You need to tone it down a bit.” When the paramedic asked if he was being too loud, or if the chief meant he should “gay it down” and the chief responded, “I can’t say that, but I’m going to tell you to tone it down.” The chief added, “any other chief would find you unfit for duty” and told the paramedic to “change the way you are.” In addition, the paramedic’s bedding was removed from the firehouse sleeping quarters and his car window was broken in the department’s parking lot. The harassment became so bad that he would sleep in the ambulance during his downtime to avoid his co-workers. He believed that he was being set up for termination through an investigation of a false positive drug test that would not have been handled as it was if he were not gay.40

Illinois Public High School

In 2008, a public school teacher reported that he was repeatedly harassed at work because he was perceived to be gay. Students wrote on the tables in his classroom that “[Caller D] is a fag” and included similar derogatory phrases in textbooks in his class, among other things. The teacher made complaints to the administration about this harassment, but received no response. The teacher is perceived to be gay but is heterosexual.41

Illinois Community College

In 2008, a gay professor at an Illinois community college was subjected to a hostile environment because of his sexual orientation.42

Illinois Public School

In 2008, a lesbian public school teacher was subjected to a hostile environment because of her sexual orientation.43

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County Sheriff’s Department

In 2007, a corrections officer reported that he was being harassed at work based on his sexual orientation. A fellow officer repeatedly referred to him as a “motherfucking faggot” in front of other officers and inmates. The officer who did this was not suspended, even though two employees who had used the “N-word” around the same time had been immediately terminated. After the corrections officer commenced a union grievance, shift commanders told him to “leave it alone” and warned him that he was “playing with fire.” Thereafter, even though he was qualified for a promotion, the position was awarded to a heterosexual candidate from outside of the department with much less experience than he had. The corrections officer eventually resigned because of the harassment.44

Municipal Department

In 2007, a transgender city chief naturalist was fired because of her gender identity.45

Bremen Community High School

In 2004, Richard Mitchell interviewed for the position of superintendent of Bremen Community High School District No. 228 in Chicago. Following his interview, school board member Evelyn Gleason encouraged the board not to hire him because he is gay. But the board chose to hire Mitchell and in 2005 extended his three-year contract through June 2009. Gleason and another board member sought to invalidate Mitchell’s contract without informing the Board on the theory that the meeting in which the contract was approved violated the Illinois Open Meetings Act, but were rejected by the Illinois State Board of Education and the Cook County State’s Attorney. Shortly thereafter, Gleason became president of the Board and fired the Board’s counsel, hiring the law firm where her son works. The new lawyer to the Board promptly circulated a memo asserting that Mitchell’s extended contract was invalid. When confronted by a parent wishing to understand why Mitchell’s contract was being contested, Gleason responded by saying, “Did you know that he’s gay?” When Mitchell notified the board that he intended to pursue his rights under local laws prohibiting sexual orientation discrimination, Gleason retaliated by trumping up false allegations against Mitchell in the media. He was suspended and later fired. Lambda Legal filed a complaint charging that Gleason’s and the school board’s actions are illegal under the Cook County Human Rights Ordinance.46

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IV. NON-EMPLOYMENT SEXUAL ORIENTATION AND GENDER IDENTITY RELATED LAW

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indicia of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

A. Criminalization of Same-Sex Sexual Behavior

Illinois became the first state to repeal its sodomy laws in 1961.47

B. Housing and Public Accommodations Discrimination

The IHRA also prohibits discrimination on the basis of sexual orientation in housing48 and public accommodations.49

C. Hate Crimes

Illinois’ hate crimes statute covers crimes committed because of real or perceived sexual orientation.50

D. Education

With respect to enrollment and access to facilities, goods and services, educational institutions are prohibited from discrimination on the basis of sexual orientation under the provisions of the IHRA pertaining to public accommodations.51 The IHRA also prohibits discrimination on the basis of sexual orientation in higher education.52

In a 2006 case, the Seventh Circuit Court of Appeals overturned the Circuit Court’s denial of a preliminary injunction in a First Amendment claim brought by a Christian student organization against public university, which had been derecognized by the law school for excluding homosexuals from its voting membership.53

E. Gender Identity

48 775 ILL. COMP. STAT.5/5-102.
49 775 ILL. COMP. STAT.5/3-102.
50 720 ILL. COMP. STAT 5A-102.
51 775 ILL. COMP. STAT.5/5-101(A)(11).
52 720 ILL. COMP. STAT 5A-102.
53 Christian Legal Society v. Walker, 453 F.3d 853 (7th Cir. 2006).
The Illinois Vital Records Act provides that the State Registrar of Vital Records should issue a new birth certificate when provided with an affidavit from a physician stating that “he has performed an operation on a person, and that by reason of the operation the sex designation on such person’s birth record should be changed.” However, the State Registrar of Vital Records will not issue a new birth certificate if gender confirmation surgery was performed by a doctor licensed in another country, and will not issue a new birth certificate for female-to-male transsexuals who have not completed “surgery to attempt to create/attach/form a viable penis.” Litigation challenging these policies as violations of both the Illinois Vital Records Act and the Illinois Constitution is ongoing.

F. Recognition of Same-Sex Couples

1. Marriage, Civil Unions, & Domestic Partnership

   Illinois law states “A marriage between two individuals of the same sex is contrary to the public policy of this State.”

2. Benefits

   A State Appellate Court affirmed the Circuit Court’s grant of summary judgment against a taxpayer who sought declaratory and injunctive relief against the City of Chicago, challenging the implementation of a city ordinance that extended employee benefits to the same-sex partners of city employees.

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54 410 ILL. COMP. STAT 535/17(d) (2007).