

## Attorney Generals Ask the Eighth Circuit Court of Appeals to Keep Sexual Orientation Discrimination Out of Title VII Protections

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Attorney Generals from Nebraska, South Dakota, Missouri, Oklahoma, Texas, Arkansas, and Louisiana collectively filed an amicus brief in an Eighth Circuit Court of Appeals case, *Horton v. Midwest Geriatric Mgmt., LLC*, requesting that the Eighth Circuit refrain from interpreting Title VII of the Civil Rights Act of 1964 (“Title VII”) to protect sexual orientation discrimination, as the Seventh and Second Circuits have done. The Attorney Generals’ argument rests on the fact that until last year, federal courts unanimously held sexual orientation was not recognized as a protected class under Title VII, and the Eighth Circuit should continue to follow this precedent. Additionally, the Attorney Generals point out that Congress has repeatedly chosen not to include sexual orientation in Title VII, in spite of several opportunities to do so.

Regardless of what the Eighth Circuit does, employers need to also be aware of the various state and local laws in this area. For example, despite many attempts in the Unicameral, Nebraska does not yet prohibit discrimination by employers on the basis of sexual orientation or gender identity. More locally, however, the City of Omaha does prohibit such discrimination on the basis of both sexual orientation and gender identity, with a limited exception for religious institutions as employers. Additionally, the Nebraska cities of Lincoln and Grand Island have both enacted ordinances prohibiting discrimination on the basis of sexual orientation, but only where the employer is the

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municipality. In sum, this is a complex area and employers are encouraged to review all applicable state and local laws governing discrimination in the workplace in order to ensure overall compliance.