

Ohio Law Does Not Prohibit Workplace Harassment Based on Sexual Orientation, Ohio Court Rules

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An employee's claim of sexual orientation harassment is not viable under the Ohio Civil Rights Act, which prohibits discrimination because of sex, the Ohio Court of Appeals has ruled. *Inskeep v. Western Res. Transit Auth.*, 2013-Ohio-897 (Ohio Ct. App. Mar. 8, 2013).

Ohio law prohibits employment discrimination "because of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of any person." The Court in *Inskeep* held that the "because of ... sex" language refers to an individual's gender, not sexual orientation. Therefore, the Court affirmed dismissal of an employee's complaint for failure to state a claim. The Court also rejected the employee's claim for negligent infliction of emotional distress.

Background

Matthew Inskeep sued his employer, Western Reserve Transit Authority, for sexual orientation harassment and negligent infliction of emotional distress. WRTA argued for dismissal of the complaint because sexual orientation harassment is not recognized under Ohio law and the complaint failed to include necessary elements for his negligent infliction of emotional distress claim. WRTA also argued that, in any event, negligent infliction of emotional distress is not recognized in the employment context in Ohio.

The trial court agreed with WRTA. It found that sexual orientation is not covered by the Ohio Civil Rights Act and that negligent infliction of emotional distress is not a separate tort recognized in Ohio in the employment context. Inskeep appealed.

Applicable Law

Ohio law prohibits employment discrimination "because of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of any person." Ohio Rev. Code 4112.02(A). Although the Supreme Court of Ohio has not addressed whether sexual orientation is a protected class, other Ohio appellate courts have concluded that, in the absence of a specific reference to sexual orientation in the statute, sexual orientation is not protected.

Under Ohio law, negligent infliction of emotional distress is actionable only if the plaintiff has either witnessed or experienced a dangerous accident or was subjected to an actual physical peril. Also, Ohio does not recognize the tort of negligent infliction of emotional distress in the employment context.

Sexual Orientation Not Covered

Inskeep argued on appeal that discrimination based on sexual orientation is discrimination because of sex. The appellate court rejected this contention. It pointed out that while several states have made sexual orientation a protected status under their discrimination statutes, Ohio has not. Furthermore, the Court noted, the Supreme Court of Ohio has not addressed the precise issue of whether Ohio Civil Rights Act's use of the word "sex" would include sexual orientation. Accordingly, the Court ruled that under Ohio law an allegation of discrimination because of sexual orientation alone is not actionable.

Negligent Infliction of Emotional Distress Claim Failed

Addressing Inskeep's negligent infliction of emotional distress claim, the Court agreed with the trial court that Inskeep's claim failed because he did not allege that he witnessed or experienced a dangerous accident or was subjected to an actual physical peril, as required under the law. Further, Inskeep did not dispute that Ohio does not recognize the tort of negligent infliction of emotional

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distress in the employment context. Accordingly, the Court affirmed the dismissal of Inskeep's complaint.

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