YLD
Allegheny County Bar Association

Point of Law

The E-Newsletter of the Young Lawyers Division of the Allegheny County Bar Association

Winter 2018

Winter is Coming: How the FLSA Applies to Leave During 'Snow Days'

By Jessica B. Michael

There's no escaping that winter is here, and with it, snow, ice, sleet and freezing temperatures. Inclement weather can shut down offices or cause employees to miss work, but the Fair Labor Standards Act ("FLSA") never takes a day off. How an employer handles this absence in terms of employee compensation, however, can pose a trap for the unwary. Even in winter, nothing can be more chilling that facing an FLSA violation.

Non-Exempt Employees

For non-exempt (hourly) employees, the application of the FLSA is straightforward. First, employers must check whether they are bound by any contractual provisions pertaining to compensation for office closures or absences caused by inclement weather. For example, a collective bargaining agreement (CBA) may provide that all employees scheduled to work will receive their regular rate of pay if inclement weather closes the offices. Or, there may be a policy that requires employees' pay be docked if they fail to work an eight-hour day. Also, some CBAs may provide for a guaranteed work week for a non-exempt employee, so review your contracts before making any deductions.

If no contractual or policy obligations exist, employers do not have to pay non-exempt employees for any time they are not at work due to weather conditions since, under the law, employers are only required to pay non-exempt employees for time

Continued on page 4

Table of Contents

Page 1....Winter is Coming: How the FLSA Applies to Leave During 'Snow Days'
Page 2....Introduction to the YLD
Page 3....Pennsylvania Supreme Court Issues New, Far-Reaching Interpretation...
Page 5....Old Dogs Should Learn New Tricks...
Page 6....A Changing Legal Landscape: Sexual Orientation Discrimination...
Page 7....October 2017 Happy Hour with PNC at Yuzu
Page 9....Jury Spends Hours Deliberating Whether to Say "Not Guilty" First as a Joke...
Page 9....December 2017 Children Shelters Wrapping Party
Page 10....February 2018 YLD Judicial Trivia Night
Page 11....December 2017 Holiday Party at the Matress Factory

Introduction to the YLD

By YLD Chair, Corinne McGinley Smith

As Chair of the Young Lawyers Division, I am often asked, "What do young lawyers really stand to gain from joining the YLD?" The easy response is – opportunity. The YLD isn't just Council members. The six YLD committees enable young lawyers to get involved in the ACBA through volunteer opportunities, continuing legal education, and social events involving other attorneys and professionals. So how can you get involved?

The YLD has a commitment to community service. One of our most active committees, the Public Service Committee, has a full slate of volunteer opportunities for any interest. The Committee has several public service events planned for this Spring, including: Strike Out Hunger, the YLD's annual bowl-a-thon to benefit the Lawyers Against Hunger initiative; matching event for attorneys looking to serve on a non-profit board; Fairy Tale Mock Trials for the actors among us, and a blood drive.

Like party planning? The YLD Member Services Committee and the Membership Outreach Committee organize opportunities for members to network, both with other YLD members and other young professionals. Events include the Esquire Open tennis tournament, the Rock Climbing Attorneys event, and a fantastic holiday party at the Mattress Factory which raised about $500.00 for Attorneys Against Hunger. Membership Outreach is focused on making sure newly-admitted attorneys and those from non-local law schools feel welcome at all events.

The Education Committee provides programming, including CLEs and lunch-and-learns, geared towards educating young lawyers on important legal issues. This year's events range from a Lunch with the Judges to a discussion on the legal ramifications of medical marijuana in Pennsylvania.

And why choose just one committee? Cross-involvement is common. For example, the Diversity Committee is collaborating with the Education Committee on a career panel focused on diverse law students. The Diversity Committee is also launching a Diverse Law Students Initiative in the early summer.

Enjoy writing? The Communications Committee is responsible for the publication of this (award-winning!) newsletter, managing the YLD's social media pages & updating the YLD website.

Much of my involvement with the YLD has been devoting my time to the public service realm. One excellent service I have identified for my chair project is called Beverly's Birthdays – a local organization whose mission is to provide birthday cheer for children experiencing homelessness in the Pittsburgh region. The YLD will organize a collection of items to complete a child's birthday party, including presents, decorations and treat bags. Please stay tuned for more informationbecause every child, regardless of personal and financial circumstances, deserves to be celebrated on their birthday.

We are at a time in the history of the legal profession when providing truly meaningful opportunities for involvement are of paramount importance. Without a doubt, the members of the YLD will continue to grow and thrive under the steady, dedicated leadership of our committees and the YLD Council. ■

Pennsylvania Supreme Court Issues New, Far-Reaching Interpretation of Environmental Rights Amendment

By Sarah Steers

Enshrined in the Pennsylvania Constitution is the right to clean air, clean water, and the "… natural, scenic, historic and esthetic values of the environment." PA. CONST. art. I, § 27. These rights belong to all citizens of the Commonwealth – "…including generations yet to come." The government has a duty to "… conserve and maintain" the natural environment for the benefit of all. According to the Council of State Governments, only six states extend environmental rights to citizens in their constitutions.[1]

In *Payne v. Kassab,* 468 Pa. 226, 361 A.2d 263 (Pa. 1976), residents of Wilkes-Barre opposed the boundaries of a street-widening project that reduced acreage to a local park. The court devised a three-part test to assess potential violations of the environmental rights amendment: 1) was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources; 2) does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum; and 3) does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion.

Following this decision, relatively few environmental rights amendment cases were filed. However, *Payne* was recently overturned. In recent years, the environmental rights amendment has become a legal *cause célèbre:* first, in Robinson Township *et al.*'s fight against

Act 13 of 2012, *see Robinson Township v. Commonwealth,* 83 A.3d 901 (Pa. 2013), *Robinson Township v. Commonwealth,* 147 A.3d 536 (Pa. 2016), and now in *Pennsylvania Environmental Defense Foundation v. Commonwealth,* 161 A.3d 911 (Pa. 2017) ("*PEDF*").

As outlined in the *PEDF* opinion, in 2008, the Pennsylvania Department of Conservation and Natural Resources ("DCNR") approved 74,000 acres for lease to extraction companies active in the Marcellus Shale natural gas region. *PEDF,* 161 A.3d at 920-21. Though those leasing agreements brought the Commonwealth over $167 million, DCNR initially declined to pursue any additional lease arrangements. The Pennsylvania Legislature, trying to balance the state budget during the Great Recession, passed the 2009 Fiscal Code Amendments and the Supplemental General Appropriations Act of 2009. Later, the Legislature passed Act 13 of 2012, the 2014-2015 General Appropriations Act, and the 2014 Fiscal Code Amendments. Together, these legislative changes transferred royalties and other incomes earned on DCNR leases from the DCNR's Lease Fund to the General Assembly's General Fund, capped DCNR's annual gas royalty allocations, financed the Marcellus Legacy Fund (which oversees non-DCNR controlled projects), and paid DCNR's operating budget from the Lease Fund rather than the General Fund.

When the PEDF filed suit in Commonwealth Court, it alleged that the above-mentioned legislation violated Pennsylvania's environmental rights amendment by failing to use funds earned from DCNR Marcellus Shale leasing operations for natural resource development and maintenance. Using the *Payne* test, the Commonwealth Court disagreed and found in favor of the Commonwealth. On appeal, the Supreme Court first overturned *Payne* (relying in part on the plurality from the *Robinson Township* decision), and

Continued on page 7

Winter is Coming: How the FLSA Applies to Leave During 'Snow Days'

Continued from page 1

actually worked. This means that if a non-exempt employee comes in late due to weather, or is dismissed early, they need only be paid for the time they are actually working unless a policy or CBA provision dictates otherwise. Employers also may permit employees to take accrued leave instead of a pay deduction. But, if the employer has agreed to pay non-exempt employees for such absences, the FLSA permits these payments to be excluded from the regular rate of pay, which means they do not have to be credited toward overtime compensation because they are not "hours worked." (Again, check for any contractual provisions to the contrary.)

Exempt Employees

Exempt (salaried) employees require more careful consideration. When inclement weather causes an employer to shut down its operations for any amount of time less than a full week, the FLSA prohibits salary deductions when the exempt employee is ready, willing and able to work. Additionally, an employer may not make any salary deductions when it decides to delay the start of the work day or to send exempt staff home early due to inclement weather. United States Department of Labor Opinion Letter, FLSA2005-41 (October 24, 2005). However, nothing in the FLSA prohibits employers from deducting paid time off from an exempt employee's leave bank for partial or full day absences as long as the employee receives his or her full salary. If an exempt employee has not banked any leave, the employee still must receive his or her full salary when there is a shutdown. The FLSA does allow an employer to make full day pay deductions from an exempt employee's salary if he or she misses a full day of work because of "personal reasons," which includes transportation issues during inclement weather. See DOL Opinion Letter, *supra.* Furthermore, government employers may be able to make partial day deductions from an exempt employee's salary due to absences based on "personal reasons," or because of illness or injury, if the employer has a "policy or practice established pursuant to principles of public accountability." See 29 C.F.R. § 541.5d. Government employers should consult with legal counsel regarding the "public accountability" exception under the FLSA.

State of Emergency

Special rules apply when the Governor declares a state of emergency due to weather. Pennsylvania's Failure to Report to Work During State of Emergency Act of 1998 forbids employers from terminating or disciplining employees for failing to report to work due to road closures in the county of the employee's residence or place of business. The Act does *not* require an employer to pay that employee, however. Keep in mind that the FLSA pre-empts any state or local laws regarding employee compensation, so any deductions must be made in compliance with federal law. Furthermore, this Emergency Act does not apply to drivers of emergency vehicles, essential corrections personnel, police, emergency service personnel, hospital and nursing home staffs, pharmacists, essential health care professionals, public utility personnel and others. Municipalities also have the power to declare a state of emergency in accordance with the plan and program of the Pennsylvania Emergency Management Agency, and should refer to their developed response plans for staffing and closures.

Correcting Mistakes

All employers should adopt a FLSA "safe harbor" policy. If an employer makes an improper deduction inadvertently or for reasons other than lack of work, the employer can lose the exempt status for all employees in that job classification. However, the possibility of losing the exempt classification can be avoided if the employer adopts and implements a "safe harbor" policy. This policy must be in writing, prohibit improper deductions, and provide employees a way to file complaints regarding deductions. The employer must notify its employees of this policy and promptly reimburse any improper deductions. ■

Jessica B. Michael, Esq. is an associate practicing in the areas of labor and employment law, as well as general litigation at Campbell Durrant Beatty Palombo & Miller, P.C.

Visit the YLD on the ACBA's website for more information on YLD events, programs and more: *www.acba.org/Young-Lawyers-Division.*

Follow the ACBA on Twitter
@AlleghenyCoBar

Editorial:

Old Dogs Should Learn New Tricks: The Shortcomings of Legal Education

By James Baker

Criticizing law school is a time-honored tradition that usually starts the moment students enter their 1L year. The recent focus of these critiques has settled on the failure of schools to teach practical skills or to prepare future attorneys for the ethical quandaries of practice. Law schools are not perfect, yet these criticisms fail to analyze areas where law schools could see greater and more fundamental improvements, namely how students are taught and assessed and the misguided incentives law school rankings perpetuate.

First off, law school professors are not taught how to teach. Some professors turn into outstanding teachers, but they are initially set up for failure when they are not taught the tools needed to teach in a classroom setting. Professors are selected for their written academic contributions, and few post-JD programs develop teaching skills. Without any requirement for formal teacher training, professors can start without any training or experience as a teacher and can easily overlook basic teaching tools when assessing and engaging students. I could not imagine having elementary teachers who lacked training in field- and age-appropriate teaching skills, and yet law schools do not even require teaching seminars for new professors. This could easily be rectified as most law schools are attached to larger universities that have teaching programs.

Regarding assessments, it is universally accepted in academics that students are taught best through constant, constructive feedback. Given that professors have no teaching background, it is no wonder that most law school classes remain based on a single, final examination. This is in stark contrast to teachers at all levels who assign regular, graded assignments with multiple opportunities for students to test their capabilities. According to this teaching method, among the worst teaching devices is to overwhelm students with reading assignments that is a mostly isolated activity, then only engage one student at a time in class through the Socratic Method, and then wait to provide any graded feedback until after the only examination in the class. Even for classes that have adopted midterms or essays, classes should have more than two or three chances for feedback in a semester.

Aggravating the single examination model, most law schools grade on a quota curve, where only a preset number of students can attain certain grades. In other disciplines, teachers choose whether to use a curve based on a number of factors, such as the difficulty of their class and whether complex topics are introduced. Quota curves work well in limited circumstances where students can be readily distinguished based on numerous, difficult evaluations that separate students based on their mastery of the material. To be effective, professors must use particular teaching techniques so the curve can work as intended. Yet without formal training in teaching, professors are unlikely to realize the need to conform their classes to the demands of the curve. Furthermore, the curve can incentivize student competition at the cost of collaboration. Students can maintain their advantage relative to other students by hoarding

Continued on page 8

A Changing Legal Landscape: Sexual Orientation Discrimination Under Title VII

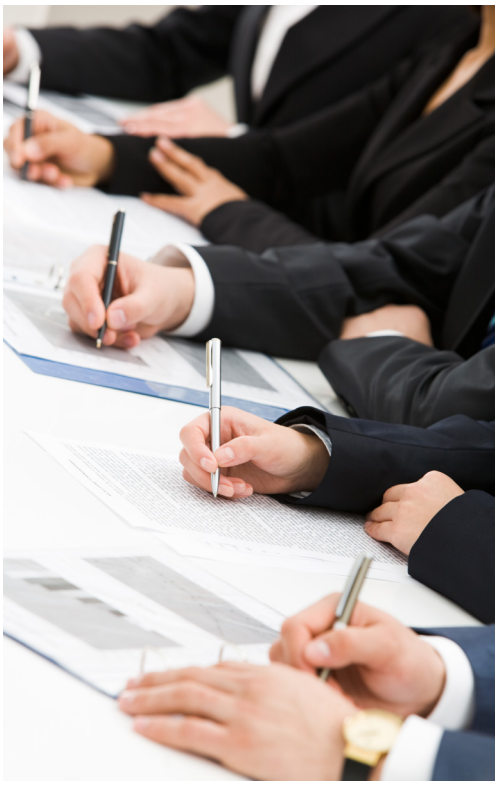
By Taylor Gillan

Title VII of the Civil Rights Act of 1964 prohibits employers that employ 15 or more employees from discriminating against workers on the basis of sex, race, color, national origin, or religion. But do these protections under the Act extend to sexual orientation as well? The answer, it seems, depends on who you ask.

While the Act does not explicitly name sexual orientation as a protected class, courts and government agencies alike remain conflicted as to whether LGBT people may be entitled to Title VII protections on the basis of sex discrimination.

In 2015, the Equal Employment Opportunity Commission ("EEOC") determined that discrimination and harassment based on sexual orientation is indeed discrimination because of sex, as prohibited by Title VII. *See Baldwin v. Dep't of Transp.,* Appeal No. 0120133080 (July 15, 2015). The Commission noted that when an employee raises a claim of sexual orientation discrimination as sex discrimination, the question at issue is the same as in any other sex discrimination case – whether sex was taken into consideration in the employment decision at issue. *Id.* It went on to state that sexual orientation discrimination is sex discrimination because it necessarily entails treating an employee less favorably because of the employee's sex. *Id.*

While the conclusions of the EEOC do not bind the federal courts, the precedent it relies on certainly does. In its federal sector decision, the EEOC cited to the Supreme Court's finding in *Price Waterhouse v. Hopkins,* 490 U.S.



288 (1989). In that case, the Supreme Court held that gender stereotyping can be actionable under Title VII. *Id.* Similarly, in *Oncale v. Sundowner Offshore Servs.,* 532 U.S. 75 (1989), the Supreme Court held that same-sex harassment is sex discrimination under Title VII.

The Western District has now weighed in as well. In November 2016, Judge Bissoon denied a defendant's motion to dismiss in *EEOC v. Scott Medical Health Center,* on the grounds that sexual orientation is a type of sex discrimination barred by Title VII.[1] In doing so, the court wrote, "There is no more obvious form of sex stereotyping than making a determination that a person should conform to heterosexuality." The court went on to state that forcing an employee to fit into a gendered expectation, whether that expectation included physical traits or sexual attraction, constituted sex stereotyping and thus violated Title VII under *Price-Waterhouse.*

However, this opinion was later followed by a conflicting one from the Eastern District. In June, the U.S. District Court for the Eastern District of Pennsylvania dismissed an employee's claim of sexual orientation discrimination under Title VII, finding that Title VII does not prohibit such discrimination. *Coleman v. Amerihealth Caritas,* No. 16-3652, 2017 WL 2423794 (E.D. Pa. June 2, 2017). The court, relying on the Third Circuit's decision in *Bibby,* found that the plaintiff had not adequately pled a gender stereotyping sex discrimination claim under Title VII, and that a sexual orientation discrimination claim under Title VII was not actionable. This decision, according to the court, rested on the fact that while Coleman stated he was subject to repeated derogatory comments regarding his gender and/or sexual orientation and/or the perception that he acted effeminate and did not exhibit stereotypically male traits, he did not provide factual allegations about comments regarding the perception he acted effeminate.

Just one month later, the Department of Justice weighed in as well. In direct conflict with the position of the EEOC, the Department of Justice filed an unsolicited amicus brief in the Second Circuit case *Zarda v. Altitude Express, Inc.* stating its position that sexual orientation discrimination does not fall under the purview of Title VII. It further claimed

Continued on page 10

October 2017 Happy Hour with PNC at Yuzu

Pennsylvania Supreme Court ... Environmental Rights Amendment

Continued from page 3

then dissected the language of the environmental rights amendment itself. It held that the "…constitutional provision grants two separate rights to the people of this Commonwealth": first, the right to clean air and water, and the preservation of the environment itself; second, "…the common ownership by the people, including future generations, of Pennsylvania's public natural resources." *PEDF,* 161 A.3d at 931.

Reflecting on the remainder of the amendment, the Supreme Court held that it creates a public trust in which "…the natural resources are the corpus of the trust, the Commonwealth is the trustee, and the people are the named beneficiaries." This determination requires the Commonwealth to proactively defend the environment. Thus, "…pursuant to Pennsylvania law in effect at the time of enactment, proceeds from the sale of trust assets are part of the corpus of the trust" – meaning any funds resulting from DCNR Marcellus Shale leases must remain in the "corpus" of the trust. Moreover, "…the phrase 'for the benefit of all the people' is unambiguous and clearly indicates that assets of the trust are to be used for conservation and maintenance purposes" – meaning the Commonwealth's use of funds earned from DCNR Marcellus Shale leases for anything other than environmental conservation and maintenance was unconstitutional (e.g., redirecting money from the Lease Fund to the General Fund).

Like any good decision, the Supreme Court's holding in *PEDF* raises just as many questions as it settles: How will the environmental rights identified in the amendment be defined? If laws that "unreasonably impair" the environmental rights afforded to Pennsylvania citizens are unconstitutional, what constitutes an unreasonable impairment? It will be interesting to observe the developing jurisprudence on this issue, especially if budget concerns continue to affect the Legislature in future years. ■

[1] Art English & John J. Carroll, *State Constitutions and Environmental Bill of Rights,* THE BOOK OF THE STATES 2015, http://knowledgecenter.csg.org/kc/system/files/English%20Carroll%202015.pdf.

Sarah Steers is a 2015 graduate of the University of Pittsburgh School of Law and is licensed to practice in Pennsylvania and New Jersey. She is currently working as the Spring 2018 Fellow at Pitt Law's Innovation Practice Institute; in her free time, she collects books for the Harbison Ave. Little Free Library in the Brighton Heights neighborhood of Pittsburgh.

Editorial: Old Dogs Should Learn New Tricks

Continued from page 5

knowledge, and the curve naturally discourages larger study groups since only so many students can get "good" grades. As the legal profession moves towards collaborative processes, such as settlement agreements and plea bargains, law students ought to have more opportunities to collaborate with their fellow students through group assignments and without the limitations of the quota curve.

Adding to this, law schools rely on their school rankings, which are based in part on acceptance rate selectivity, bar passage and employment rates, and undergraduate GPA and LSAT scores. The top law schools already excel in these areas and do not gain prestige in the rankings through innovation. The rankings lead lower-tier law schools to maintain funding that buffers these factors-and their rankings-instead of designing unique programs. The focus on prestige that results from these rankings has a marked effect on how students are accepted into law school.

The ranking criteria encourage law schools to admit select students with high LSAT scores, which are positively correlated to bar passage rates, and high undergraduate GPAs, which correlate to law school GPA and employment rates. The criteria law schools are given can cause them to admit certain types of students at the expense of others. This can then lead to law school classes primarily consisting of certain personality types, and the lack of personal diversity harms the learning environment and limits the capabilities of the legal field as a whole.

Missing from this equation are students who excel in other areas such as negotiating skills, public speaking, and community involvement to name a few. Focusing on the last group, half a million Americans each year who actively seek legal aid are denied representation due to a shortage of available public interest attorneys. Instead of addressing this problem in the acceptance process, many law schools are adopting mandatory public service hours in the hopes it will kick-start interest in public service but such efforts hardly resolve the underlying problem that students predisposed to public service are not valued in the ranking process.

Law students suffer the most from this law school framework. If schools limit the type of student they admit, this inhibits the rich potential of a diverse student body and disfavors the kind of students who may be less academically gifted but more community-oriented. Students are taught complicated legal theory by professors who may never have taught and may not know how to teach. Finally, a curve based on a single exam creates an environment where students can be rewarded with higher grades for hoarding their knowledge and the absence of constant assessments deprives students of the ability to learn from their misunderstandings of the law. With simple fixes, law schools and the American Bar Association can address these underlying concerns and bring legal education in line with the changing needs of the 21st century. ■

James Baker is an Assistant Public Defender with the Allegheny County Public Defender's Office. He is a 2016 graduate of the University of Pittsburgh School of Law and is a member of the W. Edward Sell Inn of Court.

Submit an article for Point of Law

Calling all writers and legal scholars: Point of Law, the YLD's ABA award-winning newsletter, is accepting new article submissions for the 2018-2019 newsletter. YLD members are encouraged to write about the practice of law or any substantive legal issue of interest. Additionally, writers are encouraged to write responses to any article appearing in this issue.

Featured authors will have their article – up to 1,000 words long – published along with a brief bio. Authors should contact YLD Communications Committee Co-Chair Lou Kroeck *(lkroeck@gmail.com)* to discuss potential article topics or with any questions. Articles and inquiries may be submitted to *YLDCommunications@gmail.com.*

Submitting news

Announcements should be submitted to Communications Committee Co-Chair Zach Gordon at *YLDCommunications@gmail.com* by 5 p.m. on Thursday to be included in the following Monday's *YLD Sidebar.*

Fake News:

Jury Spends Hours Deliberating Whether to Say "Not Guilty" First as a Joke Before Pronouncing Defendant Guilty

By James Thornburg

A jury of twelve citizens empaneled to decide the fate of a man charged with murder reportedly spent several hours deliberating whether to say "Not Guilty" first as a joke before pronouncing the defendant guilty.

"Some of us thought it would be funny to announce the verdict as 'Not Guilty' and watch everyone freak out," said Juror No. 2, "then we'd act like we just misspoke and confirm that the real verdict is 'Guilty.'"

"We only needed about five minutes of deliberations to unanimously agree that the defendant was guilty," said Juror No. 10. "It was obvious. But right as we were about to go back into the courtroom, Juror No. 6 mentioned something about how hilarious it would be to see everyone's reactions if we said 'Not Guilty.' Some of us laughed. Then Juror No. 7 said we should seriously do it."

"It would've been the greatest prank ever," said Juror No. 7. "The prosecutors had a slam dunk case and did a great job presenting the evidence. How funny would it be to tell them they lost and watch them lose their minds? And the defendant—this guy killed his wife in cold blood. Letting him think he got away with it for a second before pulling the rug out from under him would've been epic! There were news cameras in the courtroom—the YouTube video would've gotten like a billion hits. I still think we should've done it."

The jury was reportedly deadlocked for over four hours before the jurors

in favor of the joke finally relented. "Though many of us believed it would be funny," said Juror No. 2, "we eventually yielded to those who thought it would be mean to the victim's family."

"Buzzkills," added Juror No. 7.

While the jury ultimately decided to play it straight, their restraint was not shared by the presiding judge, who began the proceedings by declaring a mistrial as a joke. Those present who did not laugh were held in contempt of court. At press time, a YouTube video of the incident had garnered over a billion hits.

The defendant has filed an appeal arguing that the prank was an abuse of discretion, but legal experts say the appellate courts will likely rule that the judge's joke was a harmless error under the precedent set by the Supreme Court in *United States v. A Priest and a Rabbi.* ■

James Thornburg is an attorney at Quinn Logue LLC, where he focuses his practice on personal injury and commercial litigation. He can be contacted at james@quinnlogue.com.

December 2017 Children Shelters Wrapping Party

A Changing Legal Landscape: Sexual Orientation Discrimination...

Continued from page 6

this question had been "settled for decades," and could be changed only by Congress at this stage, not the courts. This input seems to mark a departure from the 2014 memo issued by former-President Obama's attorney general Eric Holder, which stated the Justice Department would take the position that Title VII protections would extend to gender identity.

At present, circuit courts remain split on the matter of whether sexual orientation discrimination is sex discrimination under Title VII. The U.S. Court of Appeals for the Seven Circuit in April became the first federal appeals court to find Title VII prohibits discrimination based on sexual orientation. *Hively v. Ivy Tech Community College,* 853 F.3d 339 (7th Cir. 2017). In conflict with this ruling, the Eleventh Circuit ruled just one month prior that sexual orientation discrimination is not actionable under Title VII. *Evans v. Georgia Regional Hospital,* 850 F.3d 1248 (11th Cir. 2017). Given the rate of conflicting judicial opinions, the Supreme Court may eventually be forced to decide this matter.

While this matter has yet to be settled nation-wide, it is important to remember that many states have separate laws which offer protections against sexual orientation discrimination. For example, the City of Pittsburgh and Allegheny County have prohibited employment discrimination based on sexual orientation. Further, it is vital for employers and employees alike to remember that, despite the Department of Justice's newly established position on sexual orientation discrimination, a charge of sexual orientation discrimination filed with the EEOC will likely continue to be treated by the EEOC as sex discrimination under Title VII. ■

[1] In so ruling, the court seemingly clashed with the Third Circuit's ruling in *Bibby v. Philadelphia Coca Cola Bottling Co.,* 260 F.3d 257 (3d Cir, 2001). However, Judge Bissoon noted the court did not view that case as dispositive, and that, among other issues, the plaintiff in *Bibby* never argued that sexual orientation discrimination is sex stereotyping. The court also noted that the principles of statutory interpretation utilized in *Bibby* have since been revised.

Taylor Gillan is an attorney whose practice focuses on employment law. She can be reached at tayloregillan@gmail.com.

February 2018 YLD Judicial Trivia Night

December 2017 Holiday Party at the Matress Factory