

CHAPTER 9 NOTES

"AFFINITY ORIENTATION" DISCRIMINATION ("SEXUAL ORIENTATION" DISCRIMINATION)

Note: "gay" and "homosexual" are used interchangeably below)

I. Affinity Orientation as a Basis for Adverse Employment decisions

A. Title VII does not include protection for sexual orientation discrimination

B. California FEHA offers such protection

C. Different types of discrimination: DeSantis p. 336

1. termination because of conclusion that the employee is gay.
2. failure to hire because of conclusion that applicant is gay.
3. harassment by co-workers not addressed by supervisor.
4. harassment by both co-workers and supervisor.
5. termination and harassment of lesbian couple at work.

D. Difference between Title VII and FEHA:

1. Under Title VII, even if disparate treatment or harassment based on sexual orientation is found - no Title VII claim.

2. Consider DeSantis facts if case arose under California FEHA: what result?

E. Even if go to a state without such protections, any form of discrimination or harassment is harmful and should be avoided.

1. What could you do as a manager in this other state to prevent sexual orientation discrimination in the workplace?

F. Could an employee in a state without sexual orientation anti-discrimination protection bring a claim of wrongful termination breach of public policy after being fired for being homosexual? Why or why not?

G. Williamson p. 339: Is there a difference between makeup and jewelry worn by men at work? Under FEHA would this be a defense to firing the makeup wearer? Why or why not?

II. Same-sex Harassment (see chapter 8 as well)

A. Same-sex harassment: recognized under both FEHA and Title VII

B. Defense to Title VII same-sex harassment claim is that harassment based on sexual orientation and not gender.

1. Would this defense work under FEHA? Why or why not?

III. Transsexual Discrimination

- A. discrimination is not expressly protected under FEHA
- B. Not protected under Title VII
- C. Transvestites - men who cross-dress. - also not protected under either statute from discrimination based on this conduct.
- D. Ulane p. 342: court cannot grant relief - what could/should a manager do?
- E. Boeing p. 343
 - 1. irony regarding uniform application of policies - reasonable accommodation for a disability might include waiver of policy for employee
 - a. gender dysphoria is not generally a disability - more in ch. 13
 - 2. the "pink pearls" issue - how had Boeing accommodated her attire?

IV. RECENT UPDATES ON CALIFORNIA LAW

A. California will require businesses with large state contracts to offer domestic partners the same benefits that spouses enjoy. Law goes into effect in 2007. (October 13)

1. Domestic partners: lived together for length of time and given mutual aid and support.

B. AB 1205: gives domestic partners most of the rights and responsibilities of married couples.