



For your information

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EEOC Decides Title VII Protects Transgender Employees

Reversing its prior position, the EEOC recently decided that discrimination claims based on gender identity, sex change, and/or transgender status are cognizable under Title VII.

Background

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination by private employers as well as federal, state, and local governments on the basis of race, color, religion, sex, and national origin. Title VII, which is enforced by the Equal Employment Opportunity Commission (EEOC), generally permits an individual who claims to have been the subject of workplace discrimination to file a charge with the EEOC.

Special procedural [rules](#) that govern federal sector discrimination claims generally require a complaint to be filed with the agency that allegedly discriminated against the individual and require that agency to investigate the complaint. A complainant may appeal an agency's final action or dismissal of a complaint to the EEOC.

Macy v. Holder

Before transitioning to being a female, Mia Macy was a police detective in Phoenix with ballistics training and certification. In December 2010, Macy learned of an opening with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (Agency) in its Walnut Creek, California crime laboratory and subsequently discussed the job with the lab's director. Macy understood that, pending a background check, she would be hired as a civilian contractor through an outside vendor (Aspen).

In late March 2011, Macy informed Aspen that she was in the process of changing her name and gender, and asked Aspen to inform the lab's director. Two weeks later, Aspen notified Macy that the job was no longer available due to budget cuts. Macy alleges she later learned that someone else was hired for the job.

In June 2011, Macy filed a complaint with the Agency, alleging that she was discriminated against on the basis of her sex, gender identity (transgender woman), and sex stereotyping. The Agency accepted the complaint, but separated her claims for processing. The Agency confirmed that it would process the sex discrimination claim under Title VII and EEOC rules. The Agency said it would process the gender identity and stereotyping claims under the Agency's "policy and practice" procedures, which

provide fewer remedies and no right for a hearing before or an appeal to the EEOC. Macy appealed to the EEOC, asking the EEOC to process her entire claim under its Title VII rules.

In [Macy v. Holder](#), the EEOC considered whether intentional discrimination against a transgender individual because that person is transgender violates Title VII's prohibition against sex discrimination. Relying largely on the Supreme Court's decision in [Price Waterhouse v. Hopkins](#), the EEOC found that the term "sex" as used for purposes of Title VII encompasses both biological sex and gender and that the term "gender" encompasses biological sex as well as "the cultural and social aspects associated with masculinity and femininity."

The EEOC explained that a transgender individual could prove sex discrimination in a variety of ways, not just by relying on a theory of gender stereotyping which has found favor with a number of courts. The EEOC reasoned that Macy could establish a sex discrimination claim on various theories, but all she had to show was that the Agency wrongly used gender in deciding not to hire her. The EEOC held that "intentional discrimination against a transgender individual because that person is transgender is, by definition, discrimination 'based on ... sex,' and such discrimination therefore violates Title VII."

INSIGHT

Sixteen states, the District of Columbia, and a number of cities have laws prohibiting discrimination on the basis of gender identity and gender expression. Employers should ensure that their policies and practices reflect applicable state and local laws protecting transgender employees.

Conclusion

The Macy decision reflects a change in how the EEOC will look at transgender discrimination claims, and is likely to have a significant impact on its enforcement activities. Although the decision was made in the government sector context, it is clear that the EEOC expects Title VII protections for the transgender community to extend to private sector employment as well.

Buck Can Help

- Evaluate the impact of this decision on your employment policies and practices
- Review EEO, nondiscrimination, anti-harassment, and privacy policies
- Train and educate managers and supervisors on Title VII and other antidiscrimination laws

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.
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