

PUBLICATION

EEOC Rules Transgender Status Protected from Discrimination Under Title VII

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The U.S. Equal Employment Opportunity Commission (EEOC) recently determined that discrimination based on gender identity, change of sex or transgender status constitutes sex discrimination under Title VII of the Civil Rights Act of 1964.

In a case brought on behalf of Mia Macy, a former police detective who claimed that she was denied a job at the Bureau of Alcohol, Tobacco, Firearms and Explosives when she announced that she would be transitioning her gender from male to female. Macy alleged that she applied for the job as a man and was told that she would get the job pending a background check, but was informed the position had been cut shortly after informing the Bureau that she would be undergoing a sex change operation. Macy alleged that she later learned that the position had not been cut and that someone else was hired for the job instead.

Believing she had been unlawfully denied the position, Macy filed an internal EEO complaint alleging discrimination on the basis of sex, gender identity and sex stereotyping. The Bureau, in turn, accepted her complaint but stated that only her claim "based on sex" would be processed under Title VII and EEOC regulations. Macy appealed to the EEOC.

The EEOC determined that claims of discrimination based on transgender status, also referred to as claims based on gender identity, are cognizable under Title VII's sex discrimination prohibition. Drawing from previous court decisions, the EEOC explained that the statute's protections encompass a person's biological sex, as well as their gender, which includes cultural and social aspects associated with masculinity and femininity. Thus, the Commission concluded, the Bureau erred by not processing Macy's claims of gender identity and sex stereotyping under Title VII and EEOC regulations.

In making its determination, the EEOC relied on U.S. Supreme Court precedent holding that Title VII forbids employers from penalizing employees who fail to conform to stereotypical norms. Under that precedent, the EEOC reasoned, Macy would have been discriminated against if she was denied a position due to the perception that her transgender status did not conform to gender stereotypes. The EEOC's decision went on to clarify that gender-stereotyping is not a separate claim, but rather a theory under which sex discrimination can be proven.

The Macy decision is binding on all federal agencies and departments, and is likely to be provided deference by the federal courts. Therefore, private employers should recognize that the Commission has determined that transgender employees and job applicants are protected by Title VII.

If you have questions about how this new ruling will affect your business, please contact any of our nearly 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.