

## A Quick Reminder Regarding Complaints In The Workplace

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Last year we reported on a landmark EEOC decision where the Agency concluded that discrimination against transgender individuals is actionable under Title VII. In that case, the EEOC held that Title VII prohibits an employer from taking adverse action based on the fact an employee/applicant fails to “adhere” to gender-based expectations or norms. It remains to be seen whether courts will agree with the EEOC’s position, but the decision appears to suggest that the argument may be viable in some jurisdictions.

There’s another angle to this issue, though: Can an employer be held liable for Title VII retaliation stemming from a complaint alleging transgender harassment? The biggest hurdle a Plaintiff will face in this context is whether the complaint amounts to “protected activity” under Title VII. Generally speaking, an employee can establish that she engaged in “protected activity” for purposes of a Title VII retaliation claim by demonstrating a “reasonable belief” that a violation of the statute occurred. This is true regardless of whether the underlying conduct amounts to actionable discrimination and/or harassment. A clever Plaintiffs’ attorney could conceivably point to the EEOC’s decision and argue that his or her client held a “reasonable belief” that a complaint regarding transgender-based harassment was protected activity under Title VII (and the adverse employment action was somehow linked to that complaint).

Bottom line: Even a “routine” complaint of unfair treatment can form the basis of a retaliation claim down the line. That being said, employers must be certain to thoroughly investigate all workplace complaints, regardless of how petty they may seem.

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