

EEOC Sues Two Employers For Transgender Discrimination

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In June, we wrote about a landmark decision where the EEOC found that discrimination against transgender individuals constitutes sex discrimination in violation of Title VII. Because it has been a while, here is a recap.

The administrative decision stems from a case where Mia Macy, a transgender individual, was denied a job as a ballistics technician by the Bureau of Alcohol, Tobacco, Firearms and Explosives. The facts are straightforward: Macy previously was a police detective in Phoenix, Arizona. In December 2010, she decided to relocate to San Francisco. During this time frame, Macy learned that the Bureau was looking to fill a position within its crime laboratory in San Francisco. While presenting as a man, Macy discussed the position with the crime lab's director. In a follow up conversation with the director, Macy was assured the job was hers pending the completion of a background investigation.

On March 29, 2011, Macy informed the contractor she was in the process of transitioning from male to female, and requested that the contractor inform the Bureau of this fact. After the Bureau allegedly became aware of the change, it informed Macy the position was no longer available due to federal budget cuts. In reality, the Bureau filled the position with another candidate. Macy filed an internal EEO complaint with the Bureau, which decided that her claim could not be processed under Title VII. Macy appealed to the EEOC, and the EEOC determined that discrimination against a transgender individual is actionable under Title VII. According to the EEOC, the law prohibits employers from taking adverse employment actions against an individual because he or she fails to conform with gender-based expectations or norms. Therefore, discrimination against a male who is presenting as a female falls within the purview of Title VII. We closed our discussion by reminding employers that the EEOC is responsible for interpreting and enforcing Title VII. As such, employers across the nation could now face federal claims of discrimination by transgender employees. Well, it has happened.

On September 25, 2014, the EEOC filed suit against Lakeland Eye Clinic alleging that it violated Title VII after it terminated an employee after learning she was transgender. That same day, the EEOC filed suit against R.G. & G.R. Harris Funeral Homes, Inc. alleging a similar violation. According to the EEOC, "such alleged behavior violates Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination, including that based on gender stereotyping."

What are the chances of this theory advancing beyond the motion to dismiss phase? A recent Sixth Circuit case indicates the chances are good. In *Woods v. Boh Brothers* (5th Cir. 2013), Kerry Woods was employed by Boh Brothers as welder. In this capacity, Woods was supervised by Chuck Wolfe. Woods claimed that during his employment, Wolfe subjected him to almost-daily verbal and physical harassment:

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- Wolfe directed very foul language and locker room talk at Woods
- Wolfe referred to Woods by graphically derogatory names many of which concerned gender
- Wolfe simulated sex acts in front of Woods and
- Wolfe made fun of Woods for using “wet wipes” instead of toilet paper.

When confronted by the Company, Wolfe stated that he did not like Woods because he “didn’t fit in.” Woods later sued the Company under Title VII claiming that Wolfe subjected him to unlawful harassment because he did not conform to Wolfe’s view of how a man should act. Woods ultimately secured a significant jury verdict, which was upheld by the Fifth Circuit. The takeaway? These claims are clearly going to surface more often. As such, employers must update their policies and ensure that it trains employees and managers to identify – and eliminate – all types of discrimination and harassment.