

EEOC Rules That Sex Discrimination Protections Apply to Transgender Employees

In a recent decision, *Macy v. Holder* (EEOC No. 012012821, April 20, 2012), the Equal Employment Opportunity Commission (EEOC) affirmed that a transgender individual's sex discrimination claims fall within the protections of Title VII of the Civil Rights Act of 1964 and the EEOC's jurisdiction.

Complainant, a former police detective, had applied for a crime laboratory position in the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), an agency within the United States Department of Justice (DOJ). On two separate occasions, the director of the crime laboratory asserted that she would be hired as long as she passed the background check. Three months into the background check process, Complainant informed the ATF that she would be transitioning from male to female. Five days later, she was informed that the position for which she had applied was no longer available due to budget cuts.

Complainant then contacted the ATF's EEO counselor, who said that the position had not been cut and the ATF had instead hired another individual who was "farthest along in the background investigation." Claiming that ATF's responses were pretextual, Complainant filed a formal discrimination complaint with the ATF based on sex, gender identity and sex stereotyping. ATF responded that only Complainant's sex discrimination claim was covered under Title VII, and that the gender identity and sex stereotyping claims would be adjudicated under a separate, parallel DOJ complaint procedure. This was significant because the DOJ process offers fewer remedies, no right to an EEOC administrative hearing, and no appeal to the EEOC.

The EEOC has jurisdiction to address employment discrimination claims under Title VII and to issue remedial orders. Complainant asserted that the ATF had effectively dismissed her gender identity and sex stereotyping claims and appealed that determination to the EEOC. In its decision, the EEOC held that the ATF had erroneously separated Complainant's claims and clarified that claims of discrimination based on transgender status, also known as gender identity, are recognized under Title VII's sex discrimination prohibition and could therefore be processed under the EEOC complaint procedure. The EEOC did not decide the merits of Complainant's claim and instead remanded it to the ATF for further administrative processing.

In its discussion of Title VII's protections for transgender individuals, the EEOC stated that discrimination based on sex is illegal whether motivated by hostility, a desire to protect people of a certain gender, by making assumptions that disadvantage a gender, or by a desire to accommodate other people's prejudices or discomfort. Further, the EEOC stated that gender discrimination protections encompass not only discrimination based on a person's biological sex, "but also the cultural and social aspects associated with masculinity and femininity."

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This holding is in accord with federal court decisions and will be treated as binding by all EEOC regional offices. It may also be given deference by other courts in their interpretation of Title VII as applied to transgendered individuals.

For questions regarding the issues raised in this news brief, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#) or follow Lozano Smith on [Facebook](#).

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