

DOJ Reverses Stance on Gender Identity Discrimination

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On October 4, 2017, the United States Department of Justice issued a memorandum reversing its stance on whether the prohibition on sex discrimination under Title VII of the Civil Rights Act of 1964 includes discrimination based on gender identity. The memorandum was authored by Attorney General Jeff Sessions. In the memorandum, Attorney General Sessions supports his conclusion in part by stating that “Title VII expressly prohibits discrimination ‘because of . . . sex’ and several other protected traits, but it does not refer to gender identity.” Although the memorandum explicitly withdraws a 2014 memorandum by former Attorney General Eric Holder who reached the opposite conclusion, Attorney General Sessions continues to state that “[n]othing in this memorandum should be construed to condone mistreatment on the basis of gender identity.”

While the DOJ’s position has changed under the new administration, it is important to point out that the memorandum is not law. Courts are not bound by an attorney general’s interpretation of a law. In fact, several federal courts have issued prior rulings supporting the coverage of gender identity discrimination under Title VII.

Furthermore, a growing number of state and local governments (including the cities of Kansas City and St. Louis) have enacted laws to protect gender identity discrimination. All businesses should consult with an employment attorney to make sure their policies and practices are in compliance with all applicable laws on gender identity discrimination.