

Increasing Efforts to Protect Transgender Workers

AUTHOR: SANDBERG PHOENIX

By Raven J. Akram

Title VII of the Civil Rights Act prohibits covered employers from making employment decisions based on an individual's sex/gender. This year, the Equal Employment Opportunity Commission (EEOC), Department of Labor (DOL) and President Obama continued the ongoing efforts to expand employment protection to transgender workers.

In 2012, the EEOC identified coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions as a top priority in its Strategic Enforcement Plan (SEP). As part of its ongoing efforts to implement its SEP, in September 2014, the EEOC filed two law suits against private employers in Florida and Michigan for discriminating against transgender employees. In both cases, the EEOC alleged that the employers violated federal law by firing employees who were transitioning from male to female, and/or because they did not conform to the employer's gender-based expectations, preferences or stereotypes. In announcing the Michigan lawsuit, the EEOC's regional director stated, "Title VII prohibits employers from firing employees because they do not behave according to the employer's stereotypes of how men and women should act, and this includes employees who present themselves according to their gender identity."

The EEOC's lawsuits followed President Obama and the Department of Labor's announcements protecting sexual orientation and gender identity. In July 2014, President Obama issued an Executive Order prohibiting federal contractors from discriminating against lesbian, gay, bisexual and transgender workers. In August, the Department of Labor released a new directive that sex-based discrimination includes bias based on gender identity and transgender status. DOL Secretary Tom Perez states, "discrimination on the basis of transgender status is discrimination based on sex," explaining that current laws necessitated the changes. "While the department has long protected employees from sex-based discrimination, its guidance to workers and employers will explicitly clarify that this includes workers who identify as transgender."

While the EEOC cases are currently pending and the President's Executive Order and DOL directive have not yet become federal law, employers should be aware of the impending changes and protections for transgender workers. Additionally, some states statutes already explicitly protect employees based on sexual orientation and gender identity. Since 2006, Illinois has prohibited discrimination in employment based on an individual's sexual orientation, which, by the statute's definition, includes gender-related identity. Missouri does not protect sexual orientation or gender identity by statute. However, there are cities and counties in Missouri that prohibit discrimination based on sexual orientation and gender identity.