

## Avoid Being the Test Case for Gender Identity Discrimination

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### Working Together

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By Stephen Sedor

A former sales associate at Saks Fifth Avenue's Houston, Texas store recently filed suit in federal court claiming discrimination based on her gender identity. Leyth Jamal is a transgender individual who identifies as a woman. She claims that during her employment with Sak's, managers persistently harassed her about her gender identity. Specifically, Jamal claims that management required her to use the men's restroom, instructed her not to wear makeup or feminine clothing, and referred to her using male pronouns. Jamal filed a discrimination charge with the Equal Employment Opportunity Commission ("EEOC") and was terminated 10 days later.

Counsel for Saks moved to dismiss the lawsuit, arguing that Jamal's claim lacks legal foundation because transgender individuals are not protected under Title VII of the Civil Rights Act. While it is true that gender identity and expression is not a protected class under Title VII, transgender employees may still bring a claim for discrimination based on gender stereotyping. In *Price Waterhouse v. Hopkins*, 490 U.S. 228, 240 (1989), the U.S. Supreme Court held that discrimination based on an employee's nonconformity with gender norms and stereotypes is a form of sex discrimination.

Saks' Motion to Dismiss has sparked a firestorm. The EEOC and U.S. Attorney General's Office have filed briefs in support of Jamal's lawsuit.

The U.S. Attorney General's involvement in this Texas lawsuit is historic, but not surprising since it comes on the heels of the Justice Department's December 15, 2014 Memorandum discussed by my colleague, John Shea, in a recent blog post.

Congress may follow suit and revive the Employment Non-Discrimination Act ("ENDA"). Until then, employers would be wise to treat transgender employees as if they are protected under the relevant discrimination laws. This applies equally to out of state employers, who may not be required to comply with state laws that expressly protect such persons from discrimination, in light of how Title VII is being broadly interpreted.

**Posted in** Board of Education, COVID-19, Executive Order, Termination, Transgender

**Tags:** Coronavirus Aid, Relief, and Economic Security (CARES Act), CT State Department of Education (CSDE), Equal Employment Opportunity Commission (EEOC), School Closures, Title VII

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