

Department of Justice To Assert Title VII Protects Transgender Status

Working Together

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In a memorandum dated December 15, 2014, the United States Attorney General has changed the Department of Justice's (DOJ) position with respect to the protection of transgender status under Title VII. While the DOJ had previously maintained that Title VII's prohibition on sex-based discrimination did not encompass gender identity per se, the DOJ will now interpret Title VII as proscribing employment discrimination "based on gender identity, including transgender status". The Attorney General noted that while Congress may not have had transgender discrimination claims in mind when it enacted Title VII, "[t]he most straightforward reading of Title VII is that discrimination "because of ... sex" includes discrimination because an employee's gender identification is as a member of a particular sex, or because the employee is transitioning, or has transitioned, to another sex."

As acknowledged by the Attorney General's memo, the DOJ position follows both the President's August 2014 Executive Order prohibiting gender identity discrimination in federal employment and government contracting, and guidance issued by the Equal Employment Opportunity Commission in 2012 and the federal Office of Personnel Management in 2011. It will be interesting to see if the Courts ultimately adopt this reasoning and permit gender identity discrimination claims in circumstances other than those alleging gender stereotyping (which have been regularly recognized as actionable under Title VII).

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