

Saks Settles Controversial Transgender Discrimination Case

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As a reminder to employers that the threat of transgender discrimination lawsuits is alive and well, Saks & Company recently settled a controversial claim of discrimination where a former salesperson claimed she had been harassed and retaliated against on the basis of her transgender identity. Saks previously argued in a Motion to Dismiss that transgender individuals were not covered by Title VII, which then sparked outrage from gender rights activists as well as both state and federal regulators. As we have previously noted in a [prior blog post](#) the EEOC clearly believes transgender individuals are covered by Title VII as they filed two separate lawsuits in September of 2014 against employers on this basis. Therefore, even if your company is located in a state that has not adopted gender identity as a protected class under state discrimination laws, employers must be aware that transgender employees may be able to bring claims for sex discrimination pursuant to federal law. In the Saks case, the employee alleged harassment through the following acts:

- Co-workers refused to use feminine pronouns when referring to her
- Co-worker's asked if she was a prostitute
- She was barred from using the women's restroom
- She was told to dress and act more masculine at work

These transgender issues create a minefield of potential liability for employers to cross:

- What about the claims of female co-workers who feel sexually harassed because a biologically male employee is using their restroom?
- Whose rights govern?

It is difficult balance, but the clear message is that employers need to update their anti-harassment policies to include all forms of discrimination and harassment, including on the basis of gender identity. Don't forget to re-train your supervisors and managers as well.

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