



EEOC Finds That Transgender Workers Are Protected By Title VII

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In a landmark decision, the EEOC recently found that discrimination against transgender individuals constitutes sex discrimination in violation of Title VII. The administrative decision stems from a case where Mia Macy, a transgender individual, was denied a job as a ballistics technician by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

The facts are straightforward: Macy previously was a police detective in Phoenix, Arizona. In December 2010, she decided to relocate to San Francisco. During this time frame, Macy was informed that the Bureau was looking to fill a position within its crime laboratory in San Francisco. While presenting as a man, Macy discussed the position with the crime lab's director. The director informed Macy the position would be filled as a civilian contractor through an outside company. In a follow up conversation with the director, Macy was assured the job was hers pending the completion of a background investigation.

On March 29, 2011, Macy informed the contractor she was in the process of transitioning from male to female, and requested that the contractor inform the Bureau of this change. After the Bureau allegedly became aware of the change, it informed Macy the position was no longer available due to federal budget cuts. In fact, the Bureau filled the position with another candidate.

Macy filed an internal EEO complaint with the Bureau, which decided that her claim could not be processed under Title VII. Macy appealed to the EEOC, and the EEOC determined that discrimination against a transgender individual is actionable under Title VII. According to the EEOC the law prohibits employers from taking adverse employment actions against an individual because he or she fails to conform with gender-based expectations or norms. Therefore, discrimination against a male who is presenting as a

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female falls within the purview of Title VII.

What does this mean going forward?

Because the EEOC is responsible for interpreting and enforcing Title VII, employers across the nation could now face federal claims of discrimination by transgender employees. It remains to be seen whether courts will agree with the EEOC's position.

As always, the best defense against any kind of discrimination claim is a decision based on job-related factors, and the policies, processes, and documentation to prove the decision was made on that basis.