

Restaurant Chain Settles Transgender Employee's Claim of Sexual Harassment and Retaliation

January 15, 2018

Last month, Bojangles' Restaurants Inc., settled a sexual harassment and retaliation lawsuit filed by the U.S. Equal Employment Opportunity Commission ("EEOC") on behalf of a transgender employee.

Jonathan (De'Ashia) Wolfe, a transgender woman, worked at Bojangles' restaurant in Fayetteville, North Carolina. Bojangles' is a fast food restaurant chain with many locations throughout the United States. Wolfe claimed that she was repeatedly subjected to offensive comments about her gender identity and appearance. Specifically, managers and co-workers demanded Wolfe conform to male behavior and grooming stereotypes. In response, Wolfe made two reports to her employer. However, the harassment continued. Shortly after making the reports, Wolfe's employment was terminated.

The EEOC filed suit on behalf of Ms. Wolfe, in the U.S. District Court for the Eastern District of North Carolina, Western Division. The EEOC brought a claim against Bojangles' for violating Title VII of the Civil Rights Act of 1964, which, in the EEOC's view, protects employees from sex discrimination, including harassment based on gender identity and sexual orientation.^[1] Specifically, the claim alleged that the restaurant subjected a transgender employee to a hostile work environment because of her gender identity and terminated her in retaliation of making a report of sexual harassment.

On December 20, 2017, Bojangles' settled with the EEOC and agreed to pay Ms. Wolfe \$15,000. In addition, the company has entered into a two-year consent decree that requires: annual training to all employees, redistribution of its anti-harassment/discrimination and retaliation policies to all employees at specified restaurants, and to report any complaints of harassment based on gender identity to the EEOC.

Lynette Barnes, a regional attorney for EEOC's Charlotte District, stated that "All employees have the right to work in an environment free from sexual harassment and gender stereotypes. Federal law provides transgender employees with protection from sex discrimination in the workplace."

Bojangles' settlement comes at a time when an exceptional number of employers have been accused of workplace sexual harassment. In the wake of the current increase in lawsuits brought by employees, companies are advised to review their sexual harassment policies and update them if necessary to ensure compliance. We encourage employers to provide regular training to employees on how to properly handle, prevent and respond to allegations of sexual harassment.

If you have any questions or concerns regarding employment related issues, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

Thank you to Victoria Jaus, a law clerk with Cullen and Dykman, for her assistance with this post.

[1] In December 2014, the attorney general at the time, Eric H. Holder Jr., **ordered** the U.S. Department of Justice to view “sex” as encompassing gender identity, extending protections to include transgender people. In October 2017, the U.S. Department of Justice reversed court in a **memorandum** stating that Title VII does not prohibit discrimination against transgender persons. The U.S. Department of Justice’s interpretation conflicts with the current interpretation of the EEOC, which interprets Title VII to prohibit discrimination on the basis of gender identity. U.S. Circuit courts are also split on the issue, which may result in sending the issue to the U.S. Supreme Court.