



U.S. Department of Justice Files Lawsuit Against Southeastern Oklahoma State University for Transgender Discrimination

April 8, 2015

Last week, in a rather bold move, the United States Department of Justice filed a lawsuit against Southeastern Oklahoma State University (“Southeastern”), alleging that the school discriminated against a transgender professor in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”). This is the first time the Justice Department has sued an institution alleging that the sex discrimination ban in Title VII protects transgender people from discrimination.

By way of brief background, it is well settled Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin. While there’s no federal law explicitly protecting transgender people from discrimination, the Obama administration has been fervently working over the past few years to expand workplace protections for transgender employees. For example, in 2012, the EEOC, the federal agency charged with enforcing federal discrimination laws, specifically acknowledged that transgender discrimination is a form of sex discrimination under Title VII. *See Macy v. Holder*, Appeal No. 0120120821 (Apr. 20, 2012). In December 2014, Attorney General Eric Holder, in an unanticipated move, announced that the Justice Department now takes the position that Title VII’s prohibition against sex discrimination includes claims based on an individual’s gender identity, including transgender status.

According to the Justice Department’s complaint, which was filed in federal district court in Oklahoma City, Rachel Tudor began working for Southeastern as an Assistant Professor in 2004. When she was hired, she presented herself as a man. In 2007, Tudor began to present herself as a woman at work, which she alleges is consistent with her gender identity. In 2009, she applied for a promotion for a tenured position but was denied, even though she allegedly performed her job well and had recommendations from her department chair and other tenured faculty. In 2010, Tudor filed an internal complaint effectively appealing the denial of her application for promotion and tenure. Southeastern terminated Tudor’s employment at the end of the 2010-11 academic year.

Soon thereafter, Tudor filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”), alleging that Southeastern discriminated against her based on her transgender status. The EEOC investigated her claims and determined that there was reasonable cause to believe discrimination occurred. On March 30, 2015, the Department of Justice brought suit against the institution, claiming that Southeastern denied Tudor’s promotion and tenure application during the 2009-10 academic year and refused to let her re-apply because she is transgender. The lawsuit also claims that the institution’s actions in the 2010-11 academic year

amounted to retaliation for filing a complaint.

“By standing beside Dr. Tudor, the Department of Justice sends a clear message that we are committed to eliminating discrimination on the basis of sex and gender identity,” said Attorney General Eric Holder. “We will not allow unfair biases and unjust prejudices to prevent transgender Americans from reaching their full potential as workers and as citizens. And we will continue to work tirelessly, using every legal tool available, to ensure that transgender individuals are guaranteed the rights and protections that all Americans deserve.”

In response, Sean Burrage, who currently heads the institution, said in a statement: “Southeastern Oklahoma State University is committed to diversity and equal employment opportunities. The University is confident in its legal position and its adherence to all applicable employment laws.”

This case and the federal government’s recent expansion of transgender rights will likely have widespread consequences for transgender people in the workplace. Employers must stay up to date with ever-changing state laws in order to ensure full compliance with all relevant discrimination and harassment laws. Employers must review, and if necessary, revise their policies in light of the federal government’s heightened expectations and increased protections recently afforded to transgender employees. Employers should pay special attention to the outcome of this case (and additional transgender cases) in order to ensure equal treatment to transgender employees.

If you or your institution has any questions or concerns regarding employment or education-related issues, please contact Hayley B. Dryer at hdryer@cullenanddykman.com or at 516-357-3745.

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