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EEOC Breaks New Ground And Holds that Transgender Discrimination Violates Federal Law

April 2012 was a busy month for the EEOC. In addition to issuing new [Guidance](#) on discrimination against ex-convicts, the EEOC strengthened discrimination protections for another traditionally marginalized group – transgender individuals. In the case of *Macy v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, the EEOC found, for the first time, that transgender discrimination is illegal sex discrimination under Title VII of the Civil Rights Act of 1964.

Gender identity and sexual orientation discrimination is already unlawful under Minnesota state law and in a number of other states, but the plain language of federal anti-discrimination laws does not prohibit such discrimination. Nevertheless, in *Macy*, the EEOC found that transgender discrimination rests on impermissible sex stereotyping and is therefore, by definition, sex discrimination under Title VII. The EEOC based its decision on U.S. Supreme Court cases that have found sex discrimination based on impermissible sex-stereotyping and on a number of lower federal court decisions holding that gender identity discrimination is unlawful sex discrimination.

Macy involved the denial of a position to a transgender woman who was allegedly promised the job, but then later rejected after disclosing her gender transition. The woman was allegedly told that funding for the position had been cut, but the employer later filled the position. After finding that the woman could proceed with a claim based on transgender discrimination under federal law, the EEOC remanded the case for a review of whether the employers decision was, in fact, discriminatory.

The EEOCs decision in *Macy* is not binding in federal courts, but federal courts often defer to the EEOCs position on federal discrimination laws. As such, it's more likely going forward that federal courts will hold that gender identity discrimination violates federal law. It is also possible that the *Macy* decision may be used by claimants to argue that sexual orientation discrimination is also sex discrimination that rests on unlawful sex stereotyping about male or feminine norms.

In light of the *Macy* decision, employers should be prepared for a possible increase in sexual orientation and gender identity discrimination claims and should review their policies and practices to ensure legal compliance.

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