

Northern New England

MONDAY MORNING MINUTE

October 6, 2014

Historic Sex Bias Suits for Transgender Workers Provide Reminder to Employers of EEOC's Stated Priorities

On September 25, 2014, the U.S. Equal Employment Opportunity Commission ("EEOC") filed its first ever lawsuits over alleged sex discrimination against transgender individuals. In two separate suits, the EEOC claims a Michigan-based funeral home and a Florida-based eye clinic discriminated against two transgender workers by firing them after they began transitioning from male to female.

According to the EEOC, the lawsuits are part of its efforts to implement its Strategic Enforcement Plan ("SEP"), which includes making coverage of gay and transgender people under Title VII's sex discrimination sections a top "enforcement priority." The cases serve as a good reminder that the EEOC's SEP provides helpful and important guidance to employers.

The agency issued the SEP in December 2012 to establish a clearly defined set of priorities for fiscal years 2013–2016. The priorities focus on issues impacting classes of workers rather than individual cases of discrimination, as follows:

- 1. Eliminating Barriers in Recruitment and Hiring.** The EEOC is targeting class-based recruitment and hiring practices that discriminate against racial, ethnic and religious groups, older workers, women, and people with disabilities. The SEP lists pre-employment tests, background checks, and date-of-birth questions on applications as employer practices that will draw the agency's attention.
- 2. Protecting Immigrant, Migrant and Other Vulnerable Workers.** The EEOC is targeting disparate pay, job segregation, harassment, trafficking, and discriminatory policies affecting

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vulnerable workers who may be unaware of their rights under the equal employment laws, or reluctant or unable to exercise them.

3. **Addressing Emerging and Developing Issues.** The EEOC is targeting emerging issues in equal employment law, for example:
 - the ADA – coverage, reasonable accommodation, qualification standards, and employers' use of the undue hardship and the direct threat defenses;
 - accommodating pregnancy-related limitations under the ADA and the Pregnancy Discrimination Act; and
 - seeking protection for lesbian, gay, bisexual, and transgender individuals under Title VII.
4. **Enforcing Equal Pay Laws.** The EEOC is targeting compensation systems and practices that discriminate based upon gender.
5. **Preserving Access to the Legal System.** The EEOC is targeting policies and practices that discourage or prohibit individuals from exercising their rights under employment discrimination statutes, or that impede the EEOC's investigative or enforcement efforts. These policies or practices include:
 - retaliatory actions for filing complaints or participating in EEOC investigations;
 - overly broad waivers;
 - settlement provisions that prohibit filing charges with the EEOC or providing information to assist in the investigation or prosecution of claims of unlawful discrimination; and
 - failure to retain records required by EEOC regulations.
6. **Preventing Harassment Through Systemic Enforcement and Targeted Outreach.** The EEOC is pursuing systemic investigations and litigation and is conducting a targeted outreach campaign to deter harassment, which is one of the most frequent complaints raised in the workplace.

Employers should understand the EEOC's priorities and use the SEP as a reminder to evaluate company policies, procedures, and practices to avoid potential liability, as an employer accused of wrongdoing that fits within any of the above categories will face significant scrutiny.

Your Jackson Lewis attorney can answer questions regarding this and other employment law issues.



The Portsmouth Office of Jackson Lewis P.C. was recently named a top tier "Labor and Employment" office in New Hampshire by *Chambers USA*.

Additionally, Office Managing Shareholder **Debra Weiss Ford** and Portsmouth Shareholders **Thomas M. Closson, Daniel P. Schwarz** and **Martha Van Oot** were named "LEADERS IN THEIR FIELD" in the 2014 Chambers USA Legal Guide.

YOU ARE INVITED!

Jackson Lewis Portsmouth Office Annual Half-Day Legal Update



Please join our Portsmouth Office for a half-day legal update on the most pressing Labor and Employment topics.

Thursday, October 9, 2014

Registration: 8:00 – 8:30 a.m. | Program: 8:30 a.m. – 12:00 p.m.

Portsmouth Harbor Events and Conference Center

100 Deer Street at 22 Portwalk Place | Portsmouth, NH 03801

For further information or to register, please see attached invitation.