

U.S. Department of Justice Reverses Course, Finds That Title VII Prohibits Transgender Discrimination

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On December 18, 2014, U.S. Attorney General Eric Holder issued a memorandum regarding the treatment of transgender employment discrimination claims under Title VII of the Civil Rights Act of 1964 (Title VII). In that document, the Attorney General noted that the federal government's position on this issue has changed over time. In 2006, the Department of Justice stated that Title VII's prohibition on sex discrimination did not cover discrimination based on transgender status or gender identity. However, after considering Title VII's text, relevant Supreme Court case law, and developing jurisprudence, the Department of Justice has determined that a better reading of Title VII's prohibition on sex discrimination is that it encompasses gender identity claims, including transgender status. The Department of Justice cannot file suit against private employers. The Department of Justice, however, could apply the new standard to claims against state and local public employers. Consequently, the Department of Justice could file suit on behalf of public employees alleging a claim of sex discrimination under Title VII based on transgender status. Additionally, the Equal Employment Opportunity Commission (EEOC)-which can file suit against private employers-has already begun suing private employers on behalf of transgender individuals who claim they have been discriminated against. (See [EEOC Files Two Ground-Breaking Cases Equating Transgender Discrimination with Sex Discrimination Under Title VII.](#)) Because of the Department of Justice's and EEOC's recent actions, both public and private employers should evaluate their policies on non-discrimination to ensure that they prohibit discrimination based on gender identity, including transgender status. Please contact any member of our [Employment Law Group](#) for assistance.

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