

AUGUST 24, 2016

## EEOC ADVANCES CAUSE OF TRANSGENDER EMPLOYEE SEEKING INSURANCE COVERAGE FROM HOSPITAL SYSTEM FOR SEX TRANSFORMATION SURGERY

### SEX TRANSFORMATION SURGERY

In a lawsuit filed in June in the Northern District of California, an operating room nurse claims that his hospital system employer, because of his sex, refused to provide insurance coverage related to his sex transformation. The plaintiff alleges that the hospital's conduct violates both Title VII of the Civil Rights Act of 1964 and Section 1557 of the Patient Protection and Affordable Care Act.

### EEOC STEPS IN

The U.S. Equal Employment Opportunity Commission ("EEOC") is now advancing the plaintiff's claim through that lawsuit. The EEOC **filed a brief** on August 22, 2016 saying that the plaintiff's condition, known as "gender dysphoria," makes the surgery "medically necessary" and that the failure to cover his gender reassignment surgery states a claim for sex discrimination in violation of Title VII. In describing the plaintiff's claim, the EEOC states that "employees who are not transgender receive coverage for all medically necessary healthcare."

The EEOC says that the plaintiff has paid out of pocket for hormone therapy and a double mastectomy after denials by his insurance plan but that he cannot afford other medically necessary treatment, including sex transformation surgery. Because health insurance benefits are terms or conditions of employment, the EEOC writes, the plaintiff's lawsuit states a claim for relief.

In taking the position that the claim is an actionable one, the EEOC says that "[a] transgender individual, by definition, fails to act in the way expected of someone of that individual's birth-assigned sex." The agency adds that because the plaintiff "fails to conform to socially-constructed gender expectations of how someone who was assigned the female sex at birth ought to act," the claim should be treated no differently than any other claim for sex discrimination.

The hospital has maintained that transgender status is not a protected class under Title VII. The EEOC responds that the word "sex" in Title VII should be construed liberally and that, regardless, "evidence of gender stereotyping is simply one means of proving sex discrimination."

### PRACTICAL TAKEAWAYS

The EEOC's position that discrimination against transgender employees constitutes sex discrimination is not entirely new. However, it is one of several matters across the country in which the EEOC is advancing this cause, including **one we recently wrote about**.

A ruling in this case may serve as significant precedent if the court broadly concludes that discrimination against transgender employees is equivalent to sex discrimination. This lawsuit will be watched closely by both employers and health insurance providers.

If you have questions regarding this issue, please contact Jon Rabin at (248) 457-7835 or [jrabin@hallrender.com](mailto:jrabin@hallrender.com) or your regular Hall Render attorney.