

Transgender Rights In the News

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Almost every day the news has some new legal development involving the rights of LGBT employees.

We already reported on the litigation heating up between [North Carolina and the DOJ](#) concerning that state's now infamous 'bathroom law', which the DOJ contends violates Title VII of the Civil Rights Act. The rulings which come out of that case should be watched closely, as they will set the stage for other litigation concerning transgender rights. Given the trend in the caselaw in recent years, I am putting my money on the DOJ, as the courts have been giving Title VII an expansive definition and have already held that the law extends beyond traditional definitions of "sex" and gender.

At the end of last week, the Obama administration published its recommendations that schools give transgender students access to the restroom of the gender they 'identify' with, which may not be the same as their biological gender. Not surprisingly, this is generating a great deal of comment and controversy. The Governor of Texas has announced that his state will not follow this guidance, and other parties are weighing in with objections and comments.

A recent settlement between the EEOC and a private staffing company, while not getting as much national press as the North Carolina case, also caught my eye and is a case employers – particularly staffing firms – should consider. It is yet another six figure settlement in a case brought by the EEOC on behalf of a transgender plaintiff. In what seems to have become a familiar fact pattern, the plaintiff alleged that, shortly after telling her colleagues she was transitioning, she was terminated from her position.

The EEOC reports that it concluded, after an investigation, that the employer was wrong and had discriminated against the plaintiff. However, a third point that is easily overlooked is the 'joint employer' issue here. Plaintiff was a temp working at the company through a staffing firm. She was assigned to work at a college, performing IT services. She was fired when the staffing company was told by the college that it did not want her on campus any longer. Even though the staffing company did not make the decision, as the "employer" it was held legally accountable for it. This is something that staffing companies, and the employers who engage them, should keep in mind going forward.

- Note that Kelley Drye partners Barbara Hoey and Mark Konkell are speaking tomorrow about this emerging issue of LGBT Rights in the Workplace, at a full day legal conference, sponsored by the Association of Corporate Counsel in New York. For more information about the ACC conference, please click [here](#).