

# Transgender Rights on the Front Page: A Continuing Conversation

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## The Evolving Expectation of Employers

Transgender issues continue to confront employers in a number of different industries. A transgendered woman recently filed a complaint with the EEOC against one of the largest health care providers in the nation, and commenced a federal lawsuit alleging sex discrimination in violation of Title VII and sought unspecified damages. This case highlights a growing issue for all employers, including those in the health care industry, namely the rights of transgender workers and the evolving expectation of employers. A few days later, the 5<sup>th</sup> Circuit issued a decision affirming summary judgment in favor of a trucking school, which had been accused by its former director of discrimination and retaliation, after she had hired a transgender employee (a woman who was transitioning to become a male). The director, Maggie Brandon, claimed that after she hired the transgender instructor, her employer threatened to “cut her pay in half.” She decided not to “wait and receive her first half-sized paycheck in the mail” and resigned her job. The lower court found that, due to the resignation, there had been no adverse employment action, and the 5<sup>th</sup> Circuit agreed. While the company prevailed, the case highlights the thorny issues which continue to confront employers as more transgender people enter the workforce. See [Brandon v. Sage Corp., 14-51320 \(5th Circuit\)](#). As discussed in a [post from last month](#), the issue of transgender rights in the workplace has received a lot of attention in the media and the laws governing those rights continues to evolve. Transgender employees are demanding more and more rights and accommodations, and many employers are scrambling to respond to these increasing demands. However, sometimes employee demands for accommodations can be unreasonable and can also be very difficult to meet operationally, and even more challenging to implement. The first case is a good example. It appears that the employee in question, a transgender female, wanted to be given access to a women’s locker room, which she claimed was “consistent with her gender.” She was not given that access, and had to thus store her coat in a ‘break room’, where she alleged it was vandalized. The plaintiff claims that she spoke with management, but still did not feel she was being treated equally. She ultimately left the job. Reading between the lines, it is not difficult to envision why a request by a transgendered female for access to a female locker room facility may be difficult to meet. It is likely there were concerns about the privacy of other female employees who also used that locker room. That said, an employer has an obligation to treat all employees, including those who identify as transgender, equally. A number of federal agencies, including the EEOC and the Office for Civil Rights, take the position that this requires a transgender employee to be given access to the restroom and locker room facilities which comport with the gender they identify with. The fact that other employees may object, in most situations, is not going to be a viable defense to a claim of discrimination. The world—and the law—is evolving on this issue, and it is important for employers to recognize the key to

compliance is understanding the law in their jurisdiction, revising existing policies and practices which may be inconsistent with recent decisions, and investing the time to explain these laws to employees who may have legitimate questions or concerns. As always, we will stay abreast of developments in this evolving area of the law.