

Justice Department Extends Title VII Protection to Transgender Government Employees

1 min read

Dec 19, 2014

In a surprising reversal, on December 18, 2014, Attorney General Eric Holder announced that the United States Department of Justice (“DOJ”) will now interpret Title VII of the Civil Rights Act of 1964 (“Title VII”) as extending to protect discrimination claims based on gender identity, including transgender status. Although this is a noteworthy change of position by the Department, the Employment Litigation Section of the DOJ enforces Title VII against state and local governments only, and private employers, therefore, will not be affected by this expansion.

Previously, the DOJ had interpreted Title VII, which prohibits discrimination based on sex, as not covering people who do not present as the gender associated with the sex with which they were born. As Attorney General Holder noted, however, several courts — including the First, Sixth, and 11th Circuit Courts of Appeals — have interpreted Title VII’s prohibition of sex discrimination as barring discrimination based on a perceived failure to conform to socially constructed characteristics of males and females. Recognizing that although Congress may not have had such claims in mind when it enacted Title VII, Attorney General Holder determined based on the text of statute, the relevant case law interpreting the statute, and the developing jurisprudence in the area, that the best reading of Title VII’s prohibition against sex discrimination is that it encompasses discrimination based on gender identity.

This announcement is an important indicator of the Obama administration’s ongoing effort to expand the law’s protection of lesbian, gay, bisexual, transgender, and other workers.

Topics

Title VII, Gender Identity