

You Can Still Fire Me

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Abstract

Chris Crain has repeatedly suggested 1, 2, 3, 4 that transgender people don't need to be included in the Employee Non-Discrimination Act because "existing federal civil rights laws have already been interpreted by some judges to protect trans workers." A recent EEOC informal discussion letter would suggest otherwise. Historically, courts and the EEOC have held [...]

Article

Chris Crain has repeatedly suggested 1, 2, 3, 4 that transgender people don't need to be included in the Employee Non-Discrimination Act because "existing federal civil rights laws have already been interpreted by some judges to protect trans workers."

A recent EEOC informal discussion letter would suggest otherwise.

Historically, courts and the EEOC have held that Title VII does not prohibit discrimination against an individual because of transgendered status. See, e.g., *Ulane v. Eastern Air Lines, Inc.*, 742 F.2d 1081 (7th Cir. 1984); EEOC Dec. 75-030, ¶ 6499 (CCH) (1974). In the past few years, however, some courts have determined that discrimination against a transgendered individual may constitute unlawful gender stereotyping in violation of Title VII's prohibition against sex discrimination. See *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Mitchell v. Axcen Scandipharm Inc.*, 2006 WL 456173 (W.D. Pa. Feb. 21, 2006); *Tronetti v. TLC Healthnet Lakeshore Hosp.*, 2003 WL 22757935 (W.D.N.Y. Sept. 26, 2003); cf. *Schroer v. Billington*, 424 F. Supp. 2d 203 (D.D.C. 2006) (disagreeing with *Ulane* and holding that discrimination based on sexual identity may be discrimination based on sex). Other courts, however, have adhered to the view that discrimination based on transgendered status does not violate Title VII. See *Etsitty v. Utah Transit Auth.*, 2005 WL 1505610 (D. Utah June 24, 2005); *Oiler v. Winn-Dixie La., Inc.*, 2002 WL 31098541 (E.D. La. Sept. 16, 2002). Whether discrimination against a transgendered individual may constitute discrimination based on sex in violation of Title VII is a factual question that cannot be determined outside the context of specific charges of discrimination and a complete investigation. - Title VII: Sex Discrimination/Coverage of Transgendered

Reading Jen Burke's "Breaking the Binary: Sex, Gender Identity, and Gender Presentation (Volume 1: Employment)" was key in my understanding of the rulings of the United States concerning gender and sex. Title VII only covers transgender people if their employer "sex stereotyped" them. Sex stereotyping is a form of harassment directed at a person because that person does not conform to traditional sex stereotypes." Sex stereotyping is just as illegal against a gay people as it is against transgender or heterosexual persons. Regardless of what you're told, it's still legal to fire someone

for being transgender.

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