

# Eleventh Circuit Resurrects Transgender Mechanic's Title VII Gender Discrimination Claim

## Labor & Employment Law Update

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Recently the Eleventh Circuit Court of Appeals (covering Georgia, Florida and Alabama) reversed a District Court decision which dismissed a Title VII gender discrimination claim brought by an auto mechanic who is transgender, *Chavez v. Credit Nation Auto Sales, LLC* (11<sup>th</sup> Cir. Jan. 14, 2016). In reinstating the plaintiff's claim, the Eleventh Circuit reaffirmed its earlier pronouncement that discrimination based on gender nonconformity is unlawful sex discrimination.

The employer claimed to have terminated the plaintiff for sleeping on the job. Because plaintiff admitted she fell asleep while on the clock, the District Court granted the employer's motion for summary judgment finding there was no evidence of pretext and therefore, plaintiff could not prove discrimination as a matter of law. The Court of Appeals disagreed.

Despite her admission, the Court of Appeals concluded that plaintiff presented sufficient evidence from which a jury could conclude that discriminatory intent was a motivating factor in the termination decision. Plaintiff presented evidence that the decision maker was nervous about her gender transition and its ramifications on the business, blamed plaintiff's gender transition for another employee's resignation, felt plaintiff's gender transition would negatively impact his business, told plaintiff not to bring up the subject of her gender transition with other employees, and instructed her not to wear a dress or anything "outlandish." This evidence, combined with testimony from another member of the management team that plaintiff was subjected to heightened scrutiny as the employer searched for a "legitimate" reason to terminate her employment, the Eleventh Circuit concluded, was enough to survive summary judgment on a mixed motive theory.

The decision reminds employers that while sexual orientation and gender identity are not protected classes under federal law per se (though several states and municipalities have added specific LGBT protections to their own anti-discrimination laws), Title VII has long been interpreted to prohibit employers from mandating that employees conform to gender-specific stereotypes and to prohibit discrimination against those employees who fail to adhere to such

stereotypes.

As far back as 1989, in *Price Waterhouse v. Hopkins*, the U.S. Supreme Court made clear that Title VII prohibits discrimination based on an employee's failure to conform to gender norms. Evidence that the accounting firm insisted Hopkins conform to gender stereotypes – it was alleged that to increase her chance of making partner she should “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry” — amounted to gender discrimination.

To avoid similar allegations, employers must be sensitive to the rights of all employees, even in jurisdictions in which sexual orientation and gender identity are not specifically articulated as protected classes under relevant law. Concern about the perceptions of customers or other employees does not justify disparate treatment against employees who fail to follow gender-specific social norms.

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