

# Employers Need to Know Gender Dysphoria – Here's Why

## Labor & Employment Law Update

By Beverly Alfon on September 8, 2022

Recently, the 4<sup>th</sup> Circuit U.S. Court of Appeals issued a decision that expanded protections under the Americans with Disabilities Act (ADA) to people with gender dysphoria. While the case at issue was not employment-related, the implications of the decision are significant for all employers because it strengthens support for claims of ADA protection for individuals with gender dysphoria within the scope of employment, public accommodations, and government benefits and services.

### What is Gender Dysphoria?

*Gender Dysphoria* refers to psychological distress – the discomfort or distress that might occur in people whose gender identity differs from their sex assigned at birth or sex-related physical characteristics. See, World Professional Association for Transgender Health Standards of Care (7th Version) and Mayo Clinic Gender Dysphoria, Symptoms and Causes.

This is a different term than *transgender*, which refers to a person whose sex assigned at birth does not align their gender identity (i.e., one's psychological sense of their gender). Many (but not all) transgender people have gender dysphoria. See, American Psychiatric Association - Expert Q&A: Gender Dysphoria. "Gender dysphoria worsens as those experiencing it grapple with expected social gender roles and sex characteristics that do not align with, or reflect, their internal sense of gender identity." See, Cedars-Sinai, Most Gender Dysphoria Established by Age 7, Study Finds.

### The Decision

In *Williams v. Kincaid*, a transgender woman, Kesha Williams, sued the Fairfax County sheriff in Virginia, claiming that her assignment to a men's detention center was discriminatory. The prison initially assigned her to women's housing, then moved her to men's housing when they learned that she was transgender.

Williams complained that the prison kept her from timely receiving her hormone therapy, that she was harassed by other inmates, and there was persistent and intentional misgendering (calling her a man, when she clearly identified as

woman) and harassment by prison deputies. The lower court granted the prison's motion to dismiss the lawsuit on the grounds that the ADA specifically excludes "gender identity disorders not resulting from physical impairments" from its definition of disability.

The 4<sup>th</sup> Circuit appellate court overturned the decision on the grounds that the ADA's definition of disability should be construed broadly and focused on "a significant shift in medical understanding" to conclude that "gender dysphoria is not a gender identity disorder." The court stated further, "a diagnosis of gender dysphoria, unlike that of 'gender identity disorder,' concerns itself with distress and other disabling symptoms, rather than simply being transgender." In the 4<sup>th</sup> circuit (Maryland, North Carolina, South Carolina, Virginia, and West Virginia), the *Williams* decision is binding and gender dysphoria is a disability under the ADA. This court's reasoning may be adopted on other jurisdictions.

### Bottom Line

When the symptoms of gender dysphoria become severe enough to "substantially limit one or more major life activities," there is now a stronger basis for an employee to assert that it is a disability under the ADA, protected against harassment, retaliation, and discrimination. Regardless of jurisdiction, employers must take action to avoid potential ADA claims based on gender dysphoria.

Educate your HR professionals and supervisors to recognize and properly handle gender dysphoria accommodation requests.

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