

Employers Without Transgender Policies May Face Increased Potential For Title VII Liability

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Employers who fail to proactively adopt policies and best practices regarding transgender and transitioning employees face growing potential for exposure to Title VII liability, as demonstrated by a recent federal case. In ***Tudor v. Southeastern Oklahoma State University***, a federal court in Oklahoma ruled that a transgender employee presented sufficient evidence of a hostile work environment to go to trial based on her testimony that, for four years following her announcement that she was transitioning from male to female, her employer restricted which restrooms she could use, how she could dress, and what makeup she could wear, and used improper pronouns. The employer asserted an affirmative defense based on the employee's failure to take advantage of preventative and corrective opportunities. Remarkably, however, although the employee never submitted a complaint or grievance to the employer, the court rejected the employer's defense because the employer's policies during the time in question did not specifically address transgender persons. The court also found that the employee's discrimination and retaliation claims would be submitted to a jury, denying the employer's argument that transgender status was not protected under Title VII. Thus, despite the uncertain legal landscape surrounding gender identity claims brought under Title VII, the threat of liability remains. Employers should, therefore, revise policies and provide clear guidance regarding appropriate workplace behavior to address issues of gender identity or expression in order to avoid lawsuits and preserve available defenses in the event that lawsuits arise.

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