

## **Frequently Asked Questions:**

### **What the EEOC's Decision in Macy v. Holder Means for You**

updated May 1, 2012

On April 20, 2012, the Equal Employment Opportunity Commission (EEOC) issued a landmark decision holding for the first time that discrimination against transgender employees is covered by the federal sex discrimination law, Title VII. This ruling was issued in the case of Macy v. Holder, brought to the EEOC by Transgender Law Center on behalf of our client Mia Macy. The decision is available online at <http://transgenderlawcenter.org/cms/blogs/552-24#ruling>.

#### **1. What happened in this case?**

Transgender Law Center brought this case on behalf of Mia Macy, a veteran and a former police detective. She was denied a job as a ballistics technician at the Walnut Creek, California laboratory of the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) after coming out as transgender.

Mia was exceptionally qualified for the position, with her military and law enforcement background. She was also one of the few people in the country with specialized training and experience on the ATF's ballistics computer system. Mia initially applied for the position as male, because she was in the early stages of transitioning and had not yet legally changed her name. The ATF lab director told her that the job was hers and she would just have to go through the formality of a background check. After she disclosed her gender transition mid-way through the hiring process, Mia was suddenly told that funding for that position had been cut. She later learned that someone else had been hired for the job.

Transgender Law Center helped Mia file a discrimination complaint with ATF. We argued that the agency's discrimination against Mia violated the federal sex discrimination law, known as Title VII. ATF refused to process the complaint properly, asserting that, in its view, Title VII did not cover discrimination against transgender people. Transgender Law Center appealed this determination to the EEOC, which issued a decision on April 20, 2012, holding that Title VII's prohibition against sex discrimination includes discrimination against transgender employees. The EEOC directed ATF to accept Mia's complaint and decide it applying Title VII.

#### **2. Why is this decision significant?**

This is the first time the EEOC has held that transgender people are protected from discrimination by federal law. The EEOC is the federal agency in charge of enforcing and interpreting federal discrimination law, and this decision confirms the growing trend of court decisions holding that sex discrimination laws protect transgender people from employment discrimination.

It is a precedent-setting decision, which was unanimously approved by the full five-member Equal Employment Opportunity Commission. It will be binding on all federal agencies and federal contractors and on EEOC offices and investigators across the country. The decision affects transgender people throughout the United States, because Title VII applies to all employers with 15 or more employees, including private sector employers and federal, state, and local government employers. The EEOC's interpretation of the law will also be entitled to significant respect from the courts when they are considering employment discrimination claims brought by transgender people in future cases.

### **3. What is the EEOC and what does it do?**

The Equal Employment Opportunity Commission ("EEOC") is an independent federal agency that is responsible for interpreting and enforcing all the federal laws that prohibit employment discrimination, including Title VII, which prohibits sex discrimination. For federal employees, the EEOC can decide discrimination complaints itself and order that remedies like money damages be paid to individuals. For employees in the private sector and in state and local governments, EEOC staff can investigate complaints of discrimination and issue findings; provide mediation between employers and individuals who have experienced discrimination; and EEOC attorneys can bring lawsuits in federal court against employers who discriminate.

### **4. What is Title VII?**

Title VII refers to Title VII of the Civil Rights Act of 1964, which is a federal law that prohibits employment discrimination based upon race, religion, sex, color, and national origin.

### **5. How will this decision affect me?**

It means that every transgender and gender non-conforming person in the United States will have access to legal protection through the EEOC if they experience employment discrimination because of their gender identity or expression. This is especially important for transgender employees in the 34 states that do not yet have nondiscrimination laws that explicitly include gender identity or expression.

### **6. How can I file an employment discrimination complaint with the EEOC?**

You can contact the nearest EEOC office for information about how to file a complaint. Generally, a person has 180 days from the date of the alleged discrimination to file a complaint with the EEOC. This 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local nondiscrimination law. To locate the EEOC office nearest to your home, contact the EEOC at 1-800-669-4000 or look on the EEOC website for a list of field offices: <http://www.eeoc.gov/field/index.cfm>. For more on the process for filing a complaint, see <http://www.eeoc.gov/employees/howtofile.cfm>.

If you are a federal employee, the timeline for filing a complaint is even shorter. Generally, federal employees have only 45 days from the time of the incident to contact their agency's EEO counselor, who will attempt to resolve the matter informally before referring it to the EEOC. To learn more about how to file a complaint with the EEOC as a federal employee, contact the EEOC at 202-663-4599 or look on the EEOC website:

[http://www.eeoc.gov/federal/fed\\_employees/complaint\\_overview.cfm](http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm).

If you live someplace that has a state law prohibiting employment discrimination based on gender identity or expression, you may want to make a complaint with the appropriate state agency and ask them to "cross-file" (that is, to open a parallel complaint) with the EEOC. To find out if your state has a nondiscrimination law that includes gender identity and expression, check out this map from The Task Force:

[http://www.thetaskforce.org/downloads/reports/issue\\_maps/non\\_discrimination\\_1\\_12\\_color.pdf](http://www.thetaskforce.org/downloads/reports/issue_maps/non_discrimination_1_12_color.pdf).

**7. When does the EEOC decision in Macy v. Holder take effect?**

The decision becomes final 30 days after it was issued. Since the decision was issued on April 20, 2012, it becomes final on May 20, 2012.

**8. Can ATF appeal this decision?**

No. ATF has no ability to appeal a decision by the EEOC to court or anywhere else. The EEOC is the final word. ATF could ask for reconsideration by the Commission, but it's very unlikely they would even ask for it, since there's an extremely high bar to get reconsideration: the agency would have to show that the decision was "clearly erroneous" in its interpretation of the law, which is plainly not the case because the EEOC decision is in line with the strong trend of court decisions in recent years.

**9. How is this EEOC ruling different than a court decision?**

Decisions by courts—other than the U.S. Supreme Court—are only binding on other courts in the same geographic area. A decision from the EEOC is binding on EEOC offices and investigators throughout the country, which means that transgender people anywhere in the country can file complaints of discrimination with the EEOC and have access to that process for investigation and enforcement. An EEOC decision interpreting Title VII would also be entitled to serious respect from the courts in future cases, because it's the agency that Congress charged with interpreting and enforcing federal discrimination law.

**10. Does the decision apply to other types of discrimination, or just employment?**

Title VII, the law involved in this case, is an employment discrimination law. But the logic of the EEOC's decision could be applied to other types of discrimination in future cases, such as cases involving discrimination in schools or in public accommodations.

**11. Does this mean I can use the restroom of the gender I identify as at work?**

This decision does not specifically address the issue of restroom access. Title VII prohibits discrimination in the “terms and conditions” of employment, and access to a safe and appropriate restroom is a condition of employment. Therefore, a person who identifies as female should be entitled to use the women’s restroom at work, regardless of the sex they were assigned at birth.

**12. Is “gender identity” now a separate protected category under federal law?**

No. The EEOC decision says that discrimination against someone for being transgender is by definition a form of sex discrimination, whether it’s understood as discrimination because the person identifies as transgender, or because they have changed their gender, or because they don’t conform to other people’s stereotypes of what men or women should be like.

**13. Why did the EEOC say that discrimination against transgender people is sex discrimination?**

Courts have recognized for many years that discrimination because someone doesn’t fit narrow gender stereotypes of masculinity or femininity is a type of sex discrimination. Discrimination against transgender people is always in some sense rooted in other people’s views that transgender people don’t fit their idea of how a man or woman “should” be.

**14. Are gay, lesbian, and bisexual people protected by Title VII?**

The EEOC’s decision in Macy v. Holder did not involve sexual orientation. The EEOC has previously suggested, however, that discrimination against someone because they are gay, lesbian, or bisexual is another type of gender stereotyping and should also be considered sex discrimination. We need further clarification that sexual orientation-based discrimination is illegal from the EEOC, from the courts, and from Congress through a law like ENDA.

**15. Do we still need employment nondiscrimination laws like ENDA that explicitly protect transgender people?**

Yes. It’s important to have protection from all sources of law. This is a decision by the agency that interprets and enforces federal sex discrimination laws, and that’s hugely important and will be binding on EEOC offices and investigators across the country. Every transgender person in the country now has access to that process and those protections. It’s also crucial to have clear protections enacted by Congress, state legislatures, and local governments, and affirmed by the courts. In order to ensure that employers are aware of their responsibilities and transgender people know their rights, we still need states and the federal government to pass nondiscrimination laws that explicitly state that discrimination based on gender identity and expression is illegal.