

Transgender Rights in the Workplace: The EEOC's *Macy* Decision



Transgender Law Center



Making Authentic Lives Possible

Transgender Rights in the Workplace: The EEOC's *Macy* Decision



AGENDA

- ❑ About the Transgender Community
- ❑ Transgender Law Center's Work
- ❑ Mia's Case
- ❑ The EEOC Decision in *Macy v. Dep't of Justice*
- ❑ What It Means for You
- ❑ Transitioning Your Workplace
- ❑ Questions & Answers



About the Transgender Community



- Definitions

- Gender Identity

- A person's internal, deeply-felt sense of being male, female, something else, or in-between

- Gender Expression

- An individual's characteristics and behaviors such as appearance, dress, mannerisms, speech patterns, and social interactions that are perceived as masculine or feminine



The State of Trans America



- Discrimination is pervasive in many areas of life
 - Family Acceptance
 - Schools
 - Identity Documents
 - Employment
 - Housing
 - Prisons & Jails
 - Public Accommodations
 - Health Care

Injustice at Every Turn:

A Report of the National Transgender Discrimination Survey



The State of Trans America



- Key Findings

- 90% experienced discrimination on the job
- Twice as likely to be unemployed
 - ✦ Trans people of color : four times as likely
- Four times as likely to live in poverty
- 41% have attempted suicide
- Vastly over-represented in the homeless population

Injustice at Every Turn:

A Report of the National Transgender Discrimination Survey



The State of Trans America

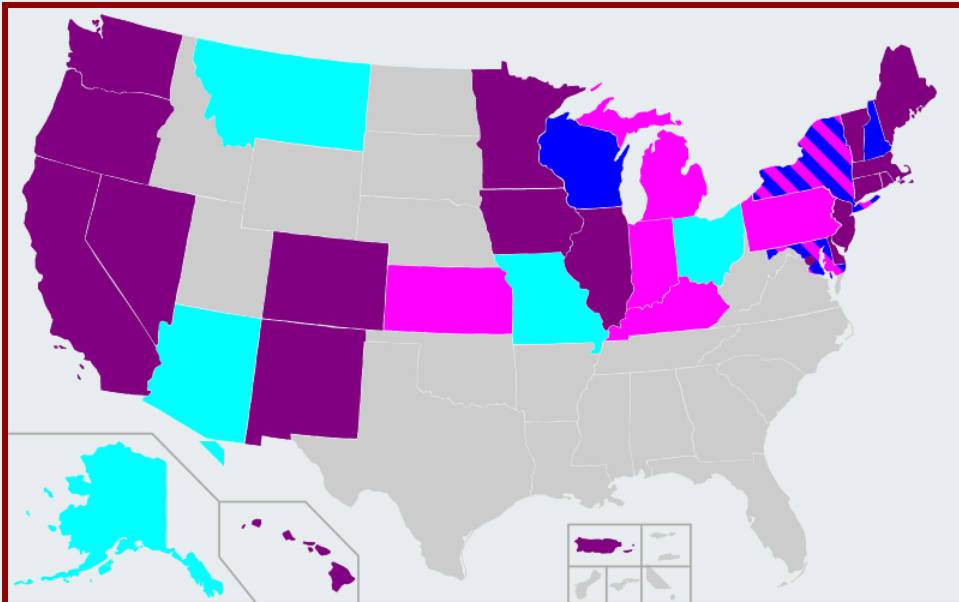


- Community Resiliency
 - Family acceptance reduces negative outcomes
 - Those who transition are more comfortable at work
- Growing Legal Protections
 - Federal courts are increasingly holding that transgender people are protected by prohibitions on discrimination based on sex

The State of Trans America

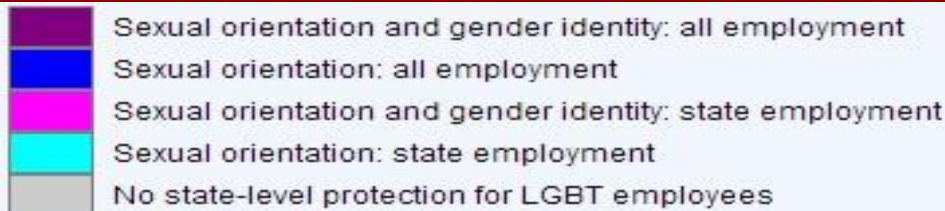


- Laws against discrimination based on gender identity and expression – 17 states and D.C.



California
Colorado
Connecticut
Delaware
Hawaii
Illinois
Iowa
Maine
Massachusetts

Minnesota
New Jersey
New Mexico
Nevada
Oregon
Rhode Island
Vermont
Washington



Transgender Law Center



- Founded in 2002
- Largest transgender organization in the country
- Multidisciplinary work:
 - Legal services
 - Impact litigation
 - Policy advocacy
 - Movement building

Transgender Law Center



- Key issues:
 - Economic justice
 - Health care access
- Legal helpline: provides information and advocacy for 2,500 callers every year

Mia's Case



- Mia Macy, an Arizona police detective and ballistics expert
- Applied for job with Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) as male, prior to transitioning
- ATF told her the job was hers, so she quit her job and moved with her family to California



Mia's Case



- Before starting work, Mia changed her legal name and gender
- She informed ATF, and they told her that funding for the position had been cut
- Someone else with far less experience had been hired instead
- As a result, her family lost their home to foreclosure



Mia's Case



- Mia contacted Transgender Law Center
- We filed an EEO complaint with ATF alleging sex discrimination under Title VII
- ATF said Title VII didn't apply to transgender employees
- We appealed to the federal Equal Employment Opportunity Commission (EEOC)



Background: Title VII



- Title VII of the Civil Rights Act of 1964 prohibits job discrimination based on race, sex, color, religion, and national origin
- Title VII applies to all federal employers and to private employers with 15 or more employees

Background: Previous Cases



- *Price Waterhouse v. Hopkins* (1989)
 - U.S. Supreme Court case holding that gender stereotyping is sex discrimination
- *Smith v. City of Salem* (6th Cir. 2004)
 - First Circuit Court decision holding transgender plaintiffs could bring Title VII claims



Background: Previous Cases



- *Schroer v. Billington* (D.D.C. 2008)
 - District court decision holding transgender discrimination is “literally” sex discrimination
 - Religion analogy
- *Glenn v. Brumby* (11th Cir. 2011)
 - Eleventh Circuit decision extending “gender stereotyping” theory to trans employees



The EEOC Decision in *Macy*



- On April 20, 2012, the EEOC issued a **unanimous** decision in *Macy v. Department of Justice*
- The EEOC held for the first time that discrimination against transgender people is unlawful sex discrimination under Title VII

The EEOC Decision in *Macy*



- *Macy* is the furthest-reaching decision yet
- Held that anti-transgender discrimination is **by definition** sex discrimination, whether understood as based on:
 - Gender stereotypes
 - Gender transition
 - Transgender identity



The EEOC Decision in *Macy*



- “We conclude that intentional discrimination against a transgender individual because that person is transgender is, by definition, discrimination ‘based on . . . sex’ and such discrimination therefore violates Title VII.”

The EEOC Decision in *Macy*: Postscript



- The EEOC decision remanded the case back to the Department of Justice (ATF's parent agency) to complete the investigation, applying Title VII to Mia's case
- Victory! In July 2013, the Department of Justice finished the investigation. It concluded that ATF had discriminated against Mia, and awarded her damages.

What the *Macy* Decision Means



- The EEOC's *Macy* decision is game-changing for transgender employees and all employers everywhere in the U.S.
- First time the EEOC has held that transgender people are protected
- The EEOC is **the** agency charged with enforcing federal discrimination laws, across the country



What the *Macy* Decision Means



- *Macy* is particularly important in the 33 states without explicit gender identity protections
- **Tipping point:** Confirms the recent trend in court decisions and gives the EEOC's stamp of approval



What the *Macy* Decision Means



- The EEOC's powers
 - **Federal agencies and federal contractors**
EEOC sets binding policy and decides complaints, and can order financial damage awards
 - **Private employers and state & local governments**
EEOC investigates, mediates, and prosecutes discrimination claims in federal court



What the *Macy* Decision Means



- Filing EEOC complaints
 - **Federal employees and job applicants**
 - ✦ First file complaint with your agency's EEO counselor
 - ✦ 45-day time limit
 - **Private-sector employees and job applicants**
 - ✦ Can file complaints in any of 53 EEOC field offices
 - ✦ 180-day time limit (extended to 300 days if analogous state law)
 - ✦ May want to cross-file with state agency



What the *Macy* Decision Means



- Areas for future guidance from the EEOC
 - Sexual orientation discrimination
 - Bathrooms and sex-segregated jobs
 - Support around transition
 - Health care exclusions
 - Defining harassment
- Principle is clear: Discriminating against transgender employees, or otherwise taking an employee's sex into account on the job, is sex discrimination



Creating an Inclusive Workplace



- Tools to advocate for an inclusive workplace
 - Advocate to add gender identity and expression to non-discrimination policies
 - Work with employers to create policies and procedures addressing common issues faced by transgender people in the workplace
 - Provide training for all levels of the organization on policies and procedures
 - Ensure health insurance policies are transgender-inclusive
 - Get a 100 on the HRC Corporate Equality Index!



Creating an Inclusive Workplace



- Benefits of creating an inclusive workplace:
 - Survey reveals that transgender respondents are twice as likely to hold a bachelor's degree than the average Californian
 - In 2013, **57%** of Fortune 500 companies have anti-discrimination policies that protect transgender individuals
 - ✦ Up from **3%** in 2002
 - Mitigate exposure to liability

Creating an Inclusive Workplace



- Encourage Employers establish Best Practices:
- Use preferred name and pronouns
 - If unsure, ask in private!
- Base sex-segregated policies on gender identity
 - Bathroom use and dress codes
- Respect Privacy
 - Don't ask about medical history, including surgeries
 - Don't "out" trans people to others



Questions and Answers



?

More Questions? Contact Us!



Transgender Law Center



Making Authentic Lives Possible

Ilona Turner, Legal Director

ilona@transgenderlawcenter.org

415-865-0176 ext 304

Legal Helpline

info@transgenderlawcenter.org

415-865-0176 ext 306