CLIENT ALERTS & INSIGHTS

Gender Dysphoria Protected by the ADA, Per Fourth Circuit

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Recent case law continues to develop the scope of legal protections for transgender individuals. One month after a Texas court enjoined the Equal Employment Opportunity Commission ("EEOC") from enforcing its 2021 guidance protecting transgender individuals, the Fourth Circuit has recognized gender dysphoria as a disability protected by the Americans with Disability Act ("ADA").

In *Williams v. Kincaid*, Kesha Williams, a transgender woman with gender dysphoria, filed suit against the Sheriff of Fairfax County alleging violations of the ADA stemming from her treatment as an inmate at a Virginia detention center. Williams was housed in the men's unit of the facility, faced delayed access to her prescribed hormone therapy medication, and was denied various accommodations she had requested relating to her gender dysphoria. The district court dismissed her claim, holding that it failed to state grounds for relief and that gender dysphoria is not a disability under the ADA.

The Fourth Circuit reversed. Although the statutory text of the ADA excludes "gender identify disorders not resulting from physical impairments" from the statutory definition of disability, the court concluded that gender dysphoria is different than gender identity disorder. Gender dysphoria is defined as the "clinically significant distress" felt by individuals who experience incongruity between their gender identity and assigned sex. Gender dysphoria is thus categorized by extreme distress. In addition, it may result from a physical impairment, with the need for hormone therapy indicative of a physical basis for the condition. Thus, Williams' claims survived a motion to dismiss.

While this ruling focused on Title II of the ADA regarding government services, its impact may be felt by employers, particularly those operating within the Fourth Circuit. Employers are already prohibited from discriminating against employees based on gender identity, but the *Williams* decision indicates that employers may also need to grant accommodations to such employees if they suffer from gender dysphoria. Employers in the Fourth Circuit should, therefore, treat requests for accommodation based on gender dysphoria in the same manner as any other disability-related request for accommodation.

Although it is unclear if other circuits follow the Fourth Circuit, this decision provides insight into what may lie ahead. Employers should evaluate their current policies. For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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