

Discrimination Against Transgender Employees On The Basis of Gender Non-Conformity Ruled Illegal

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In a decision issued on December 6, 2011, the Eleventh Circuit Court of Appeals (which has jurisdiction over Florida) has ruled that an employer may not discriminate against a transgender employee on the basis of gender non-conformity. That case, *Vandiver Elizabeth Glenn v. Sewell R. Brumby*, -- F. 3d --, 2011 WL 6029978 (December 6, 2011) (11th Cir. 2011), makes clear that employers can be liable for sex or gender discrimination in taking adverse action against a transgender or transsexual, as with any employee, on the basis of the employee's failure to comply with gender-based behavioral norms and gender stereotypes.

The Plaintiff in *Glenn* was born a biological male, and in 2005 was diagnosed with Gender Identity Disorder ("GID"). Starting in 2005, Glenn began taking steps to transition from male to female. In 2006, Glenn advised her direct supervisor that she was a transsexual and in the process of becoming a woman. After Glenn advised her supervisor in 2007 that she was ready to proceed with gender transition and would begin coming to work as a woman, Defendant Brumby terminated Glenn because "Glenn's intended gender transition was inappropriate, that it would be disruptive, that some people would view it as a moral issue, and that it would make Glenn's coworkers uncomfortable." Brumby testified in his deposition that he fired Glenn because he considered it "inappropriate" for her to appear at work dressed as a woman and that he found it "unsettling" and "unnatural" that Glenn would appear in woman's clothing. Brumby further admitted that his decision to fire Glenn was based on "the sheer fact of the transition."

Glenn sued Brumby seeking relief for sex discrimination. The trial court entered summary judgment in Glenn's favor. On appeal, the Eleventh Circuit affirmed, relying on the Supreme Court decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989),

which found that discrimination on the basis of gender stereotype is sex-based discrimination.

The Eleventh Circuit explained that "[a] person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes." Because the case law already established that gender stereotype discrimination is prohibited, the Court held that discrimination against a transgender or transsexual individual because of her gender-nonconformity is clearly sex discrimination whether it is described as being on the basis of sex or gender. Brumby's deposition testimony provided direct evidence that he acted on the basis of Glenn's gender non-conformity, which mandated summary judgment for Glenn.

Although the case dealt with claims under the Constitution, the decision clearly applies to sex discrimination charges against private employers under Title VII. As such, employers should ensure that workplace policies protect against transgender discrimination. In addition, the decision reinforces that employers must prohibit discrimination against any employee on the basis of gender stereotypes and gender-based behavioral norms.

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