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August 2022

Fourth Circuit Holds Gender Dysphoria Is a Covered Disability Under the ADA

On August 16 the Fourth Circuit Court of Appeals became the first federal circuit court to hold that gender dysphoria is covered by the Americans with Disabilities Act (ADA), extending coverage under the law to any individual within its circuit (Maryland, Virginia, West Virginia, North Carolina, and South Carolina) seeking accommodations for gender dysphoria, including in employment, public accommodations, or any other context in which the ADA provides disability protections.

The opinion, *Williams v. Kincaid*, 4th Cir. No. 21-2030, revived an incarcerated transgender woman's disability discrimination claim over a Virginia detention center's decision to place her in men's housing. She alleged in her complaint that she experienced delays in medical treatment, was harassed by other inmates, and was subjected to persistent and intentional misgendering and harassment by prison deputies. The Fourth Circuit also revived her gross negligence claim.

While the ADA covers a broad range of conditions it considers "qualified disabilities" that must be accommodated in employment, public, and other settings, it expressly excludes several conditions from coverage, including "gender identity disorders." That said, federal district courts have for years held that gender dysphoria is separate and distinct from gender identity disorders. Judge Joseph F. Leeson, Jr. of the U.S. District Court for the Eastern District of Pennsylvania first made this distinction in 2017. In *Blatt v. Cabela's Retail, Inc.*, Judge Leeson said gender identity disorder narrowly refers to the condition of identifying with a different gender, not the disabling conditions, like gender dysphoria, that might come with it.

Judge Leeson's distinction is consistent with the American Psychiatric Association's (APA) definition of the term as clinically significant distress or impairment related to a strong desire to be of another gender. The APA says that gender dysphoria can interfere with an individual's social life and their ability to do their job as well as other important daily functions. In the years following *Blatt*, several other federal district courts, including courts in Georgia, Massachusetts, Idaho, Illinois, and Florida, have similarly held that the ADA covers gender dysphoria.

The Fourth Circuit's recent opinion, however, marks the first time the issue has been addressed by a circuit court of appeals. The majority said that the definition of gender dysphoria stands in sharp contrast to the definition of gender identity disorder, which the APA removed from its diagnostic manual nearly a decade ago. The court held that the shift in medical understanding of gender dysphoria and its classification as a disabling physical condition rather than simply identifying with the opposite gender demonstrates the differences between the two conditions and what Congress intended to preclude from the ADA's protections.

The dissenting opinion in *Williams* argued that the majority had impermissibly expanded the ADA's scope beyond its clear language. Even assuming the truth of the complaint's allegations of gender dysphoria, the dissent reasoned that there was no basis for finding coverage under the ADA.

It is unclear at this time whether the defendant will seek the U.S. Supreme Court's review of the decision and how the Fourth Circuit's ruling would fare given the Supreme Court's conservative supermajority. For now, employers in

the Fourth Circuit's jurisdiction should be aware that ADA coverage presently extends to employees requesting accommodations for gender dysphoria. And employers elsewhere should also consider the potential implications of this decision as well as the array of district court decisions that have reached similar conclusions as courts across the country will undoubtedly continue to confront this issue.

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