Title IX – Coming to a Private Sector Business Near You?

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In Doe v. Mercy Catholic Medical Center, 2017 U.S. App. LEXIS 4004 (3d Cir. March 7), the U.S. Court of Appeals for the Third Circuit held that a former medical resident at a private Philadelphia hospital could bring a civil rights action under either Title VII of the Civil Rights Act of 1964 or Title IX of the Education Amendments of 1972. This decision has the potential to transform Title IX litigation and puts all employers who receive federal financial assistance on notice that Title IX and its procedurally specific mandates may apply to private employers who receive federal funds and engage in educational programs or activities.

Jane Doe, a medical resident at a private Philadelphia hospital, contended her supervisor sexually harassed her and dismissed her from the residency program after she formally complained to human resources. Instead of proceeding under Title VII of the Civil Rights Act of 1964, the traditional anti-discrimination statute, Doe relied on Title IX of the Education Amendments of 1972. This allowed her to avoid filing a charge of discrimination with the Equal Employment Opportunity Commission (EEOC).

Like Title VII, Title IX prohibits sex-based discrimination, including sexual harassment and hostile environment. Title IX applies exclusively to "education programs or activities" that receive federal funding and the students and employees who participate in those programs or activities. Title VII is viewed as a catch-all statute protecting employees who work for public and private employers alike from discrimination based on their membership in a protected class. However, unlike Title VII, a prospective Title IX litigant is not required to file a charge with the EEOC or administratively exhaust her claim before filing suit.

In Doe, the Third Circuit took a broad view of what constitutes "education programs or activities" under Title IX to include a private employer without a core educational mission. The court concluded that the residency program run by Mercy Catholic Medical Center through its affiliation with Drexel University's

College of Medicine qualifies as an "education program or entity" as defined by Title IX, by virtue of its receipt of federal dollars through Medicare funding. The lower court, dismissing Doe's claim, reasoned that Congress intended Title VII as the exclusive avenue of relief from employment discrimination. The lower court held that a medical resident could not use Title IX as a means of circumventing Title VII's administrative exhaustion requirement.

The Third Circuit disagreed. In reaching the conclusion that Doe was not limited to Title VII, the court identified four guiding principles: private-sector employees are not restricted to Title VII in seeking relief from workplace discrimination; whether an alternate avenue of relief for workplace discrimination circumvents Title VII's mandatory administrative procedures is a matter of policy within the purview of Congress; Title IX implies a private cause of action that applies to both students and employees; and Title IX's private cause of action extends to employees of federally-funded education programs who allege retaliation claims on the basis of sex.

For employers with training programs akin to the certificated residency program offered by Mercy Catholic, the Third Circuit's expansive definition of "education" is significant. The court focused on whether the program at issue is structured as an education program; whether program participants receive a degree, certification or other qualification for successful participation; whether there are teachers, grades and a tuition associated with the program; and whether the program is promoted as educational. The Third Circuit found that Doe's allegations satisfied each of these criteria.

The Doe decision follows the trend of cases from other circuits, which have grappled with the reach of Title IX and likewise taken an expansive view. That is, the Third Circuit found persuasive the Second Circuit's broad reading of the scope of Title IX, holding that a "program or activity" under 20 U.S.C.S. Section 1687 is an "education program or activity" under 20 U.S.C.S. Section 1681(a) if it has "features such that one could reasonably consider its mission to be, at least in part, educational." The Third Circuit determined that the Second Circuit's interpretation is harmonious with Title IX's text and structure, "lines up with the Eighth and Ninth Circuits' applications of Title IX beyond educational institutions 'in the sense of schooling' to entire state-prison systems offering inmates educational programs," and is "consistent with the First Circuit's application of

Title IX to a university's medical residency program." Additionally, the Third Circuit noted that this reading of the statute is in accord with how twenty-one federal agencies, including the Departments of Education and Health and Human Services, have interpreted Title IX. For these reasons, the Third Circuit adopted the reasoning laid out by the Second Circuit.

The Third Circuit's decision in Doe, however, raises anew the possibility that private sector employers who are not primarily engaged in the business of education can find themselves in Title IX's crosshairs. For example, beyond hospitals and other medical employers, the Doe decision implicates government contractors with training and apprentice programs, as well as libraries and museums. Similarly, financial institutions and corporations that enroll employees in structured development programs may also now fall within the ambit of Title IX if they receive any federal funding.

In the short term, the most obvious ramification of the Doe decision for employers is that participants in their educational programs and activities may elect to go straight to court to litigate claims instead of engaging in the administrative process required under Title VII. Additionally, employers like Mercy Catholic Medical Center should consider whether they need to comply with all of the internal requirements prescribed under Title IX, including identifying a designated Title IX coordinator and establishing policies and procedures for addressing Title IX-related complaints. Doe makes it clear that Title IX is moving out of the traditional classroom. Private employers would be wise to take note. •

Special to the Law Weekly Erin C. Galbally, of Clark Hill, guides her clients through complex labor, employment and Title IX matters. Galbally regularly appears before the EEOC and the Pennsylvania Human Relations Commission. Andrew J. Ruxton focuses his practice on all aspects of the employment relationship, including employment agreements, noncompetition agreements, traditional labor issues, discrimination, harassment, Fair Labor Standards Act compliance and drafting and implementing employment policies and handbooks.