
In Landmark Decision, Federal District Court Holds the ADA Protects Gender Dysphoria

By Ethan M. Dennis / Jun 01, 2017

In *Blatt v. Cabela's Retail, Inc.*, No. 5:14-CV-04822 (E.D. Pa. May 18, 2017), a federal judge in the Eastern District of Pennsylvania allowed a transgender plaintiff to pursue a claim against the outdoor retail chain under the Americans with Disabilities Act ("ADA") for alleged discrimination on the basis of her gender dysphoria (also known as gender identity disorder) and for retaliating against her for opposing that discrimination. This case is the first time any federal court has recognized gender dysphoria as a disability under the ADA.

In her complaint, the transgender plaintiff, a former Cabela's employee, alleged that, in October 2005, she was diagnosed with gender dysphoria and that this condition substantially limited her major life activities of interacting with others, reproducing, and social and occupational functioning. The plaintiff also alleged that she was subject to degrading and discriminatory comments on the basis of her disability, and that her former employer denied her request to use a female nametag, uniform and the female restroom as accommodations for her disability. She further alleged that as a result of requesting these accommodations, she was subjected to a "pattern of antagonism" and that she was ultimately terminated on the basis of her disability.

The ADA requires that an employer to provide reasonable accommodations to qualified individuals with disabilities who are employees or applicants for employment, unless doing so would cause undue hardship. A plaintiff must demonstrate that she is disabled within the meaning of the ADA as a necessary element of her claim. The ADA broadly defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities of [an] individual" 42 U.S.C. § 12102(1)(A). However, the ADA also specifically excludes from this definition of disability approximately one dozen conditions, including "gender identity disorders" *Id.* at § 12211.

Cabela's filed a motion to dismiss its former employee's claim for ADA discrimination, arguing that the plaintiff merely alleged having a gender identity disorder and, therefore, did not have a disability under the statute. In opposing the motion, the plaintiff argued that her gender dysphoria did, in fact, satisfy the disability requirement and, in the alternative, if her condition did not do so, the ADA violated her equal protection rights under the United States Constitution.

The court denied Cabela's motion, reasoning that the "gender identity disorder" exclusion must be read narrowly to refer to only the condition of identifying with a different gender. Under this narrow interpretation, the "gender identity disorder" exclusion does not encompass gender dysphoria because that condition goes beyond merely identifying with a different gender and is characterized by clinically significant stress and other disabling impairments. In other words, under this decision, being transgender is not protected by the ADA, but a transgender individual may have a disability if that individual has disabling stress and difficulty interacting with others. In issuing this decision, the court explicitly avoided any holding as to the constitutionality of the "gender identity disorder" exclusion.

This decision has been hailed by the plaintiff's attorneys as a major victory for transgender individuals. This case follows a trend towards extending protection for transgender individuals under equal employment opportunity statutes. Under the Obama Administration, the EEOC took the position that Title VII prohibits employment discrimination based on gender identity or sexual orientation. The EEOC has held that intentional discrimination against a transgender individual because of that person's gender identity is, by definition, discrimination based on sex and therefore violates Title VII. However, some federal courts have disagreed with this interpretation of Title VII and have held that Title VII does not protect an individual merely due to their transgender status (but may prohibit discrimination on the basis of sex stereotyping). Regardless of federal law, many states, including California, Illinois and New Jersey, have protected gender identity under their state employment discrimination statutes.

Going forward, employers should expect to see an increase in claims under the ADA by transgender individuals. A careful reading of the *Blatt* case reveals some lessons for employers to avoid such claims. Employers should keep in mind that the definition of "disability" is extremely broad under the ADA. In the *Blatt* case, a transgender individual had difficulty functioning around others due to her gender identity and the court focused more on her difficulty interacting than her transgender status. Regardless of a person's gender status, employers should think about the ADA when an employee reveals a difficulty in interacting with other individuals due to a diagnosed condition. This case is a reminder about the importance of engaging in an interactive dialogue with employees, if there is any question that the employee has a disability. Through that interactive dialogue, employers can identify if a reasonable accommodation exists and avoid ADA lawsuits.

If you have any questions about gender dysphoria as a disability or how to conduct an interactive accommodation dialogue, contact Ethan Dennis at (215) 640-8427 | edennis@clarkhill.com or another member of Clark Hill's Labor and Employment Practice Group.