

# Employee Benefit ■ Plan Review

## Federal Circuit Court Rules Transgender Workers May Be Covered by Americans with Disabilities Act

BY TIM K. GARRETT AND KRISTIN TITLEY

The U.S. Court of Appeals for the Fourth Circuit recently held that the Americans with Disabilities Act (“ADA”) covers individuals with “gender dysphoria.” According to the American Psychiatric Association, gender dysphoria describes an uncomfortable conflict between a person’s assigned gender and the gender with which the person identifies.

Transgender employees gained protections against job discrimination with the U.S. Supreme Court’s landmark 2020 ruling in *Bostock v. Clayton County* that said LGBT employees are covered by Title VII of the 1964 Civil Rights Act. But the ADA goes beyond prohibiting bias and discrimination, requiring that employers provide reasonable accommodations. For workers with gender dysphoria, that duty to accommodate could mean allowing leave from work for medical procedures or hormone therapy, as well as modifications to bathroom or dress-code policies.

### THE CASE

In a case involving a former inmate who accused a Virginia prison of discrimination, *Kesha Williams v. Stacey Kincaid et al.*, Williams, a transgender woman, was originally

incarcerated in women’s housing but was quickly moved to men’s housing at the Fairfax County Adult Detention Center when officials learned that she was transgender.

Williams sued under Title II of the ADA, which applies to disability discrimination in the provision of government services, alleging that the defendants violated the ADA when they transferred her from women’s housing to men’s housing after discovering she was a transgender woman. Williams further asserted that the defendants delayed her medical treatment for gender dysphoria and that she experienced harassment by inmates and prison officials.

After her release, Williams filed a lawsuit alleging violations of the ADA, the Rehabilitation Act, and Virginia common law. The trial court dismissed the case on a pretrial filing by the defendants, holding that gender dysphoria is not a disability under the ADA.

Williams then appealed to the Fourth Circuit, where the defendants conceded that gender dysphoria met the definition of a “disability.” The ADA broadly defines “disability” as “a physical or mental impairment that substantially limits one or more major life activities of such individual.”<sup>1</sup> However, the defendants argued that, since the ADA excludes from this

definition “gender identity disorders not resulting from physical impairments,” Williams’ claims under the statutes failed.

#### THE FOURTH CIRCUIT’S DECISION

The Fourth Circuit rejected this argument. The court ruled: “We see no legitimate reason why Congress would intend to exclude from the ADA’s protections transgender people who suffer from gender dysphoria.” In reaching its decision, the Fourth Circuit looked toward the medical community to facilitate its interpretation of “gender dysphoria” under the ADA umbrella. After analyzing Supreme Court precedent, Circuit Court precedent, congressional intent, and advances in the medical community, the Fourth Circuit determined gender dysphoria is encompassed by the ADA and does not fall within the “gender identity disorders” that Congress intended to exclude from the ADA’s protections. The court explained that when the ADA was enacted in 1990, the term “gender identity” focused on transgender status only and was distinct from and did not include gender dysphoria, which causes “clinically significant distress” and other disabling symptoms.

The Fourth Circuit also agreed with Williams’ alternative argument – even if “gender dysphoria” and “gender identity disorder” are not entirely separate, her gender dysphoria falls within the ADA’s safe harbor for “gender identity disorders . . . resulting from physical impairments.” For Williams, her gender dysphoria required hormone therapy, a physical treatment she received for 15 years, and that she suffered physical distress during her incarceration when it was not provided.

With the appeals court decision, the district court’s dismissal of William’s ADA claims has been reversed, and Williams will be able to move forward with her case.

#### THE IMPACT OF THE DECISION ON EMPLOYERS

Employers are obligated to engage in the interactive process with employees who are qualified individuals with a disability under the ADA. The Fourth Circuit encompasses Maryland, North Carolina, South Carolina, Virginia, and West Virginia. The *Williams* decision is therefore controlling in these states. However, employers in all states should take note of the decision as this case will undoubtedly be cited in other states as persuasive

and could be adopted in other jurisdictions.

As individuals with gender dysphoria may be entitled to the interactive process and may be qualified to receive reasonable accommodations, employers should train personnel on the types of medical procedures or treatments associated with gender dysphoria. Employers should begin to understand where accommodations may need to be afforded for employees with gender dysphoria and should also consider including information on the topic in their employee anti-harassment and discrimination training. 🌐

#### NOTE

1. 42 U.S.C. § 12102(1)(A).

Tim K. Garrett, a member of Bass, Berry & Sims PLC resident in the firm’s office in Nashville, helps employers solve complex issues related to all aspects of labor and employment law, providing in depth counseling and developing creative solutions to underlying business issues. Kristin Titley, an attorney in the firm’s Nashville office, represents clients in all facets of employment and labor matters. The authors may be contacted at [tgarrett@bassberry.com](mailto:tgarrett@bassberry.com) and [kristin.titley@bassberry.com](mailto:kristin.titley@bassberry.com), respectively.

Copyright © 2022 CCH Incorporated. All Rights Reserved.  
Reprinted from *Employee Benefit Plan Review*, November-December 2022, Volume 76,  
Number 9, pages 8–9, with permission from Wolters Kluwer, New York, NY,  
1-800-638-8437, [www.WoltersKluwerLR.com](http://www.WoltersKluwerLR.com)

