Off Campus Expansion: Title IX Applies to Hospitals and Institutions Outside of Education, Appellate Court Rules

Legal Alert

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In a novel expansion of federal anti-discrimination protections, the Third Circuit Court of Appeals recently reversed the district court's dismissal of a Title IX lawsuit against Mercy Catholic Medical Center, a private hospital, and allowed an unnamed plaintiff's harassment and discrimination claims to proceed.

In *Doe v. Mercy Catholic Medical Center*, the Court determined Title IX of the Civil Rights Act – which prohibits discrimination under any education program receiving federal financial assistance – applies to private teaching hospitals operating a residency program, and specifically that a former resident's gender discrimination claims could be asserted under Title IX. Importantly, the first-of-its kind decision also established that employees within New Jersey, Pennsylvania and Delaware may now bring federal discrimination claims against a covered employer under both Title IX and Title VII, which is the employment law section of the Civil Rights Act. This means that a private business – outside of the traditional higher education system – can still fall within Title IX if it receives federal funding and meets the law's criteria.

In *Mercy Catholic*, the plaintiff was a former medical resident who alleged that she was sexually harassed by a male doctor and was eventually forced out of her radiology residency. The district court initially dismissed the complaint, finding that Title IX applied only to institutions that provide education "in the sense of schooling," and the residency program was not an "education program." The Third Circuit disagreed, and held that the residency program was an "education program" under Title IX, and the hospital received "federal financial assistance." Although the residency program was part of a hospital – and not a school – this alone did not determine whether it was an "education program" under Title IX.

To determine whether the residency program was a covered program under Title IX, the Court held that a "program or activity" is an *education* program under the law if it has "features such that one could reasonably consider its mission to be, at least in part, educational."

Because the Third Circuit found that Mercy's residency program met this test, it was covered under Title IX. In making this determination, the Court considered that the plaintiff-resident was required to attend lectures and classes on a university campus, was trained by faculty members and physicians, took examinations, and would have been eligible to be licensed at the conclusion of the program.

Additionally, because the hospital accepted Medicare funds, that was sufficient federal funding to make it subject to Title IX. Significantly, this means that in the Third Circuit, government payments from Medicare or Medicaid could be sufficient to subject private hospitals to Title IX.

The Court also held that Title VII, which prohibits discrimination in employment, *does not* bar private causes of action for retaliation and *quid pro quo* harassment under Title IX. Therefore, covered employers can be subjected to liability for discrimination under both Title VII and Title IX, as well as a host of state laws and even local ordinances. While the anti-discrimination protections of Title IX may overlap with many existing employment laws, employees who can proceed under a Title IX case may see strategic advantages for doing so, for instance, being relieved of the requirement to first bring an EEOC charge. Although the plaintiff in *Mercy* did not file an EEOC charge, that was not fatal to her Title IX claim, the Court ruled. This differs from the Fifth and Seventh Circuits, which have held that Title VII provides an exclusive remedy for employment

discrimination on the basis of sex in federally funded education institutions.

The plaintiff's hostile work environment claim was, however, barred by the applicable two-year statute of limitations. To support a hostile work environment claim, discriminatory acts must be all part of the same unlawful employment practice. The Court held that the plaintiff's dismissal from the residency program within two years was a discrete act actionable on its own as a retaliation or *quid pro quo* harassment claim, and could not simultaneously support a hostile environment claim because there were no other similar timely acts to fall within the continuing-violation doctrine.

If your company or firm (1) utilizes residents, interns or other students working toward some type of degree, certification or course of study, and (2) receives federal funding of any type, you may want to examine whether Title IX will apply to such activities.

Flaster Greenberg has extensive experience litigating Title IX cases, and advising clients on these issues. Please contact Annie Kernicky, Adam Gersh, or another member of our firm's Labor and Employment group if you would like to discuss any of these issues further.

ATTORNEYS MENTIONED

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