



CIRCUIT COURT RULES GENDER DYSPHORIA COVERED BY ADA: WHAT THIS MEANS FOR EMPLOYERS

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In August, the U.S. Fourth Circuit Court of Appeals (which hears appeals from Maryland, North Carolina, South Carolina, Virginia and West Virginia) ruled that “gender dysphoria” qualifies as a protected disability under the Americans with Disabilities Act (ADA).

In *Williams v. Kincaid*, Williams, a transgender woman, challenged her placement in a general population men's prison. Williams claimed that the Virginia prison system violated the ADA by placing her in an all-male prison and by denying her certain care and accommodations. In overturning a lower district court's dismissal, the Fourth Circuit analyzed what qualifies as a “disability” under the ADA. More specifically, the court noted that the statute excludes from the broad definition of “disability” — and thus from the statute's protections — “transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, [and] other sexual behavior disorders.”

Of particular note, the Fourth Circuit ruled that a “significant shift in medical understanding” requires that “gender dysphoria” differs from “gender identity disorder” and the other specific exclusions found in the text of the ADA. The court relied upon the American Psychiatric Association, which defines “gender dysphoria” as “clinically significant distress” felt by some of those who experience “an incongruence between their gender identity and their assigned sex.”

What Williams Means for Employers: The Williams decision comes in a long string of court opinions addressing gender identity, gender dysphoria and the rights of transgender persons under federal law. Although Williams did not concern a workplace environment, employers should be aware of the Fourth Circuit's interpretation of the ADA's exclusions. It is unclear whether other circuits or courts in Texas will follow this line of reasoning. Nonetheless, employers should understand how this ruling impacts employee relations issues involving employees living with gender dysphoria. For guidance and advice on how this

recent decision affects the management of your workforce, please contact the firm's Labor, Employment and Benefits group.

Editor's Note: The pronouns and genders used in this Alert mirror those used by the Fourth Circuit in its decision.

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