



Welcome To The Neighborhood: Hospitals Need To Get To Know Title IX

Insights

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Hospital administrators are well aware their institutions are subject to a whole host of workplace-related federal statutes: Title VII of the Civil Rights Act, the Health Insurance Portability and Accountability Act (HIPAA), the Employee Retirement Income Security Act (ERISA), and the Family and Medical Leave Act (FMLA), just to name a few. However, due to a recent federal appeals court decision, you may need to familiarize yourself with a federal statute that perhaps is not yet on your radar – Title IX of the Education Amendments Act of 1972.

Title IX prohibits discrimination primarily in educational settings. There has long been a split in opinion among courts about whether employees of federally funded educational programs can bring sex discrimination claims under the statute – several appeals courts have allowed such claims to proceed, while others have said Title VII is the exclusive remedy for such issues. However, a federal appeals court recently concluded for the first time that individuals alleging sex discrimination in medical residency programs can bring Title IX claims.

If your institution has such a teaching program, it's time you got to know Title IX.

Resident Brings Title IX Claim To Allege Sex Discrimination

Although the facts of *Doe v. Mercy Catholic Medical Center* are straightforward, the decision will have a significant impact on private entities receiving federal funds for educational programs. Mercy Catholic Medical Center, affiliated with Drexel University's College of Medicine, is a private teaching hospital that operates accredited residency programs in the Philadelphia area. The residency programs receive federal funding through Medicare graduate medical education payments.

In 2013, an unidentified medical resident – “Jane Doe” for purposes of litigation – brought suit against the hospital. She alleged she was the victim of sex discrimination and retaliation when she was terminated for reporting unwanted sexual advances by the program's director. Rather than advancing her claim via Title VII, Jane Doe alleged a violation of Title IX. This permitted her to circumvent the administrative requirements of Title VII, which include filing a charge with the Equal Employment Opportunity Commission (EEOC) prior to taking her case to court.

The federal court in the Eastern District of Pennsylvania dismissed Doe's civil complaint, concluding that Title IX did not apply to Mercy Catholic. The lower court decided the residency program did not qualify as an “education program or activity” as required by the statute, and told Doe that Title VII

provided the exclusive avenue of relief for any employment discrimination claims she wanted to bring. Doe then brought her case to the 3rd Circuit Court of Appeals, which recently issued a first-of-its-kind ruling.

Court Broadly Defines “Education Program Or Activity”

On March 7, 2017, the 3rd Circuit (which hears cases arising out of Pennsylvania, New Jersey, and Delaware) became the first federal appeals court to allow a plaintiff seeking sex discrimination relief to advance a Title IX claim against a medical residency program.

The court first confronted the issue of whether Mercy Catholic’s residency program qualified as a covered entity under Title IX. It noted the statute prohibits discrimination on the basis of sex by “any education program or activity receiving federal financial assistance.” The court pointed out that Congress used the broader term “education program or activity” in this section of Title IX, instead of the narrower term “education institution,” which is used in other provisions of the statute. Noting that the Supreme Court instructed courts to interpret Title IX as broadly as possible, the 3rd Circuit adopted an expansive approach and concluded the term “education program or activity” should include any institution whose “features” lead it to reasonably be considered to have a mission that is, “at least in part, educational.”

The appeals court then delineated the following non-exclusive factors to help determine whether a program was sufficiently “educational”:

- Whether it is incrementally structured through a particular course of study or training;
- Whether it allows students to earn a degree or diploma, qualify for certification or certification examination, or pursue a specific occupation or trade beyond mere on-the-job training;
- Whether it provides instructors, examinations, an evaluation process or grades, or accepts tuition; and
- Whether the entities offering, accrediting, or otherwise regulating the program hold it out as educational in nature.

In examining Mercy Catholic’s residency program, the court found it is a multiyear regulated program of study training, requiring residents to learn and train under different faculty members, attend lectures, present cases under supervision, attend a physics class at the university, and sit for annual examinations. Applying this test to the facts pleaded in Jane Doe’s civil complaint, the 3rd Circuit ultimately concluded that Mercy Catholic’s residency program was “educational,” thus falling within the ambit of Title IX.

Court: “Title IX Provides Alternative Private Right of Action”

But there was one more hurdle for Jane Doe to overcome. While the court concluded the residency program was an entity covered by Title IX, it still had to determine whether Title VII was the

exclusive remedy for an employee's private right of action alleging sex discrimination. If so, Doe would not have been able to proceed with her Title IX claim. Although the court readily concluded that medical resident Jane Doe was an "employee" who *could* assert claims under Title VII based on the conduct she alleged, it rejected the assertion that she was therefore prohibited from alternatively asserting claims under Title IX.

Relying on precedent from six Supreme Court decisions discussing the availability of separate and distinct remedies under Title VII and other statutes, the 3rd Circuit followed four guiding principles and concluded that Title IX provides an alternate avenue for claims based on sex discrimination.

First, it ruled that private sector employees should not be limited to Title VII as their only means of relief from workplace discrimination. Second, it is a matter of "policy" for Congress to determine whether to allow circumvention of Title VII's administrative requirements such as Title IX permitted. Third, the provision in Title IX granting the private right of action should be read broadly to encompass employees and not just students. Finally, as pronounced by the Supreme Court in *Jackson v. Birmingham Board of Education* (2005), Title IX's implied right of action should extend to employees of federally funded education programs who allege sex-based retaliation claims.

Split In Circuits

By permitting Jane Doe – a medical resident, and thus an employee – to assert a private right of action of sex discrimination under Title IX, the 3rd Circuit explicitly parted from the 5th and 7th Circuits, which had held that Title VII provides the exclusive remedy, and instead aligned with the 1st and 4th Circuits, which had permitted Title IX sex discrimination claims to be brought by employees of federally funded educational programs. However, never before had a federal appeals circuit concluded that Title IX sex discrimination claims can be brought by those in medical residency programs.

This case could be the first domino to fall, leading other circuits to follow suit and similarly expand Title IX to include claims by medical residents and faculty members. For this reason, medical institutions with any type of teaching program, especially those affiliated with a university, should familiarize themselves with Title IX sooner rather than later.

Impact For Medical Residency Programs – And Beyond

Hospitals know they are subject to state and federal employment discrimination laws, and are familiar with the various compliance protocols that accompany them. However, you may be surprised to learn about the significant repercussions resulting from an employer's violation of Title IX. Title IX conditions federal funding on a recipient's promise not to discriminate in what is essentially a contract between the agency and the recipient. Thus, if an institution is alleged to have violated Title IX, the institution's continued receipt of federal funding is jeopardized.

In fact, in the *Doe v. Mercy Catholic Medical Center* case, the 3rd Circuit contemplated whether federal funding extended to Medicare's indirect graduate medical education payments in residency programs, but ultimately left the issue for the trial court to decide. Nonetheless, institutions have

programs, but ultimately left the issue for the trial court to decide. Nonetheless, institutions have been put on notice by this decision; a Title IX violation could lead to a loss of those education payments, which are essential to providing affordable teaching programs to talented and qualified residents.

This decision should serve as an excellent reminder for all hospitals with teaching programs – not only those in Pennsylvania, New Jersey, and Delaware – to scrutinize the requirements of Title IX, as well as review internal policies to ensure compliance with the law. This includes providing anti-discrimination and harassment training to any medical professionals participating in residency programs.

Additionally, your discrimination policies and procedures should be provided to all medical residents and residency faculty members. Further, you should ensure that all faculty understand the importance of promptly responding to a resident's complaint of discrimination or harassment. Absent appropriate policy and procedures, you may risk learning the full nature and extent of a sex discrimination claim only after a lawsuit is filed; at that point, monetary and reputational consequences may be far more detrimental.

The decision in *Doe v. Mercy Catholic Medical Center* is significant for its broader implications. Although a circuit split currently exists, it is becoming increasingly clear that Title IX is not simply limited to formal educational institutions. In a society constantly developing new methods and opportunities to deliver education beyond the traditional classroom setting, this is an especially valuable lesson.

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