



International Protections for Transgender Employees

Insights

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In the United States, the debate over protections for transgender employees continues, even as the Equal Employment Opportunity Commission, some courts, and the U.S. Justice Department take the position that Title VII of the Civil Rights Act provides employment protection for transgender employees on a national level. In addition, many states, counties and municipalities have enacted their own laws protecting transgender employees in the workplace. Although many countries outside of the United States do not prohibit discrimination against transgender employees, U.S. citizens living and working overseas may be protected under U.S. law from transgender discrimination and harassment, and U.S. employers may also have a duty to protect transgender employees traveling on company business from violence and harassment in the host country.

With limited exceptions, Title VII protects U.S. citizens employed outside the U.S. if they are employed by a U.S. employer or a foreign company controlled by a U.S. employer. This means that your U.S. citizen employees working abroad are afforded the same protections against workplace harassment, discrimination and retaliation as a U.S.-based employee. Further, U.S. employees working for a covered employer in the U.S., regardless of citizenship or work authorization status, are also protected by Title VII.

Beyond any state or Title VII protections, employers sending employees abroad for company business may also have a duty to protect those employees from any known dangers. Those dangers could include threats of violence directed at the employee because of the employee's identification as a transgender individual. While the parameters of that duty are not well-defined, employers should stay informed regarding the risks present in any country to which employees are sent, and provide employee training and support to anticipate possible risks and develop plans to address foreseeable risks.

Finally, a growing number of countries have also outlawed transgender discrimination and harassment, and American employees working in those countries may have legal rights under both U.S. law and the laws of that country. Keep in mind that employees seconded to another country may be able to invoke legal protection in the U.S. or the country of residence to redress harassment, discrimination and retaliation because of that employee's transgender status.

Some countries or regions which provide explicit protection for transgender individuals include Canada, which introduced national legislation prohibiting transgender discrimination on May 17, 2016. Discrimination against transgender employees is already prohibited in each of the Canadian

2016. Discrimination against transgender employees is already prohibited in each of the Canadian provinces. In the European Union, discrimination against transgender employees has been outlawed since 1996, and transgender discrimination has been unlawful in the United Kingdom since 1999. Both Spain and the UK allow transgender individuals to change their names and gender designation on official documents without the individual having to undergo surgery. Australia has outlawed transgender discrimination in its Sex Discrimination Act.

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