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The ADA and Gender Dysphoria

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The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities. Disability is defined to include “a physical or mental impairment that substantially limits one or more major life activities of such individual.” In a case of first impression, the U.S. Court of Appeals for the Fourth Circuit held in August 2022 that individuals with gender dysphoria may be protected under the ADA. *Williams v. Kincaid*, 2022 WL 3364824.

Gender dysphoria is when an individual experiences clinically significant distress from their sexual anatomy – genitalia, facial hair, voice, or other physical aspects. Gender dysphoria typically arises when an individual's sexual characteristics are incongruent with the individual's gender identity.

Williams involves a transgender (born male, identifying as female) prison inmate. Prior to incarceration, *Williams* had received hormone treatment for gender dysphoria for 15 years; Maryland had issued her a driver's license showing her gender as female; and once in prison, she was assigned to the women's housing and given uniforms that were typically provided to female inmates. However, during the preliminary medical evaluation the nurse labeled her as “male” and reassigned her to the male population housing. This led to *Williams* being harassed by prison deputies and inmates, not getting access to her prescribed hormone medication, and when searched, it was done so by a male deputy despite her requests for a female. Once released, *Williams* sued the Sheriff of Fairfax County and other prison employees, asserting violations of the ADA (and other causes of action, not relevant here).

The ADA provision that is at the center of this case is the exclusion from the definition of disability, “gender identity disorders not resulting from physical impairments.” § 12211(b) The district court granted the defendants' motion to dismiss due to this provision. *Williams* appealed this ruling, asserting (1) that she did not have a “gender identity disorder,” but rather gender dysphoria; and (2) that even if gender dysphoria were a “gender identity disorder,” “it results from a physical basis that places it outside of the scope of the exclusion from ADA protection

The court found that the ADA distinguished gender identity disorders from gender dysphoria: “The difference between gender identity disorders and gender dysphoria, as revealed by the DSM and the WPATH Standards, would be more than enough support to nudge [*Williams*] claims that gender dysphoria falls entirely outside of § 12211(b)'s exclusion for gender identity disorders across the line from conceivable to plausible.” (Internal citations omitted). Even if these two were not distinct, *Williams*' gender dysphoria falls within the ADA's safe harbor as it results from physical impairment

This opinion is a powerful win for those with gender dysphoria. While this case does not involve an employment relationship, the Fourth Circuit's holding potentially has broad implications for employers. Employees diagnosed with gender dysphoria may be entitled to antidiscrimination protections under the ADA, including reasonable accommodations related to their condition such as modified work schedule, leaves of absence for medical procedures, and restroom usage consistent with an individual's gender identity. The Fourth Circuit's decision is binding only in the states within its jurisdiction – Maryland, North and South Carolina, Virginia and West Virginia. It is important to remember that gender dysphoria may not be protected everywhere under the ADA. However, employers outside of the Fourth Circuit should be mindful of comparable state or local laws that protect employees experiencing gender dysphoria: for example, gender dysphoria is recognized as a disability under the New York State Human Rights Law.

As these questions continue rising through our judicial system, employers should ensure that they stay up to date with legal requirements and be prepared to evaluate accommodations for those with gender dysphoria. Employers should treat these accommodation requests with care and continue educating themselves, as these issues require careful navigation. Employers should continue to proactively monitor their policies and practices and provide regular training to employees to ensure compliance.