

## Department of Justice Warns Governor that North Carolina LGBT Law is Unlawful

By Ann H. Smith and Michelle E. Phillips

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North Carolina's law restricting access to restrooms based on an individual's sex assigned at birth and not based on an individual's consistent gender identity violates both Title VII of the Civil Rights Act and Title IX of the Education Amendments of 1972, the United States Department of Justice has said in a letter to North Carolina Governor Pat McCrory dated May 4, 2016. The DOJ also instructed Governor McCrory that he has until May 9, 2016, to respond by confirming that the state will not implement the law.

North Carolina risks losing hundreds of millions of dollars in federal funding if Governor McCrory defies the warning and continues supporting the law. As of May 5, at least five federal agencies, including the United States Department of Education, which provides federal funds to educational institutions, are weighing whether to withhold federal funds from the North Carolina.

The DOJ's letter comes on the heels of a flurry of activity from federal agencies as well as a ruling from the U.S. Court of Appeals for the Fourth Circuit, in Richmond, relating to transgender discrimination. In *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056 (4th Cir. Apr. 19, 2016), the Court, whose jurisdiction encompasses North Carolina, ruled that a lower court improperly dismissed the claim of a transgender male plaintiff who alleged that the Gloucester, Virginia, school district's policy barring him from the boys' bathroom violated Title IX. This follows the Department of Education's directive in recent resolution agreements and findings determining that rules prohibiting transgender individuals from using the bathroom of the sex by which they identify violates Title IX. (See our article, [School District Faces Government Sanctions under Title IX for Denying Transgender Female Student Access to Locker Rooms.](#))

In addition, the Equal Employment Opportunity Commission on May 3, 2016, released a new fact sheet focusing on bathroom access and reminding employers that discrimination based on transgender status is sex discrimination in violation of Title VII. (See our article, [EEOC Stresses Title VII Bars Discrimination against Transgender Workers, Including Regarding Bathroom Access.](#)) OSHA also has issued [A Guide to Restroom Access for Transgender Workers](#), identifying what it considers to be best practices.

Both employers and education institutions should stay apprised of both employee and student protections and ensure that their anti-discrimination and anti-retaliation policies comply with the applicable laws.

Finally, the Department of Justice sent similar letters to the North Carolina Department of Public Safety and the University of North Carolina notifying them of the DOJ's conclusion that "they have engaged in violations of Title VII as well as violations of Title IX" and other regulations. Please contact the Jackson Lewis attorney with whom you regularly work if you have any questions.

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