

# District Court Permits Transgender Person Diagnosed With Gender Dysphoria to Sue Under Americans With Disabilities Act

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*Blatt v. Cabela's Retail, Inc.*, No. 5:14-CV-04822, 2017 WL 2178123, at \*2 (E.D. Pa. May 18, 2017). District Court for the Eastern District of Pennsylvania denies employer's motion to dismiss failure to accommodate and retaliation claims brought under the Americans with Disabilities Act ("ADA") by a former employee diagnosed with Gender Dysphoria.

## Summary and Factual Background

The plaintiff, Blatt is a transgender individual who is also diagnosed with Gender Dysphoria, a condition that substantially limits one or more of her major life activities, including, interacting with others, reproducing, and social and occupational functioning. Blatt claimed that shortly after she was hired by Cabela's, Cabela's began to discriminate against her on the basis of her sex and her disability, in violation of the ADA and other federal laws, and that Cabela's retaliated against her for opposing this discrimination. Blatt further alleged that Cabela's terminated her employment based on her sex and disability, Gender Dysphoria.

The stated purpose of the ADA is to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). In pursuit of this purpose, Congress broadly defined "disability" as "a physical or mental impairment that substantially limits one or more major life activities of [an] individual." *Id.* § 12102(1)(A). However, there are exceptions to the ADA's coverage. Specifically, 42 U.S.C. § 12211, excludes from ADA coverage approximately one dozen conditions, including "gender identity disorders." The main issue before the Court was whether Gender Dysphoria is a "gender identity disorder" and, therefore, beyond the scope of the ADA. The secondary issue was whether Blatt set forth a claim under the ADA.

## Discussion

Cabela's moved to dismiss Blatt's ADA claims, arguing that the term "gender identity disorders," as used in 42 U.S.C. § 12211, encompasses Blatt's Gender Dysphoria. This argument was supported by the fact that Blatt alleged in her complaint that she was diagnosed with "Gender Dysphoria, also known as Gender Identity Disorder." Moreover, the Court acknowledged that Cabela's position was consistent with the accepted medical definition of Gender Identity Disorder when the ADA was enacted.

However, the Court rejected Cabela's interpretation of "gender identity disorders" as used in Section 12111 of the ADA. First, the Court found that the exceptions listed in § 12211 fall into two distinct categories: 1) non-disabling conditions that concern sexual orientation or identity (e.g., homosexuality, bisexuality); and 2) disabling conditions that are associated with harmful or illegal conduct (e.g., pedophilia, pyromania, compulsive gambling). Next, the Court noted that the term, "gender identity disorders," if it included Gender Dysphoria, would not fit into either category because Gender Dysphoria is a disabling condition that is not associated with harmful or illegal conduct.

Therefore, the Court concluded that the term “gender identity disorders” had to be interpreted narrowly “to refer to only the condition of identifying with a different gender, not to encompass (and therefore exclude from ADA protection) a condition like Blatt’s Gender Dysphoria, which goes beyond merely identifying with a different gender and is characterized by clinically significant stress and other impairments that may be disabling.”

Based on this narrow interpretation, the Court rejected Cabela’s argument that Blatt’s condition was not a disability within the scope of the ADA.

The Court also rejected Cabela’s argument that Blatt failed to allege that she engaged in protected activity by opposing disability discrimination in her workplace.

To state an ADA retaliation claim, a plaintiff must allege that: (1) she engaged in a protected activity; (2) she experienced an adverse employment action following the protected activity; and (3) there is a causal link between the protected activity and the adverse employment action. A causal connection may be shown by: (1) an unusually suggestive temporal proximity between the protected activity and the allegedly retaliatory action, or (2) a pattern of antagonism coupled with timing to establish a causal link. A “pattern of antagonism” is a consistent and continuous pattern of conduct, which can include a constant barrage of written and verbal warnings as well as disciplinary action.

The Court found that Blatt’s allegations that she continually reported to her superior that she was subject to degrading and discriminatory comments on the basis of her disability, that she requested a female nametag and uniform and use of the female restroom as accommodations for her disability, and that as a result of requesting these accommodations she was subjected to a “pattern of antagonism” prior to her termination sufficiently set forth an ADA retaliation claim. The Court, therefore, denied Cabela’s motion to dismiss.

### **Practical Advice**

This case emphasizes the importance of employers being sensitive to the needs of their employees with nontraditional sexual or gender identities and highlights the risks of failing to do so. Generally speaking, if an employee is diagnosed with a disability, the employee is covered by the ADA unless the disability is associated with enumerated harmful or illegal conduct set forth in Section 12111 of the ADA. Moreover, courts will interpret the exceptions set forth in Section 12111, especially those related to gender or sexual identity, narrowly.

Moreover, the exceptions set forth in Section 12111 of the ADA may be vulnerable to a Constitutional challenge. Blatt argued that if her condition was covered by the “gender identity disorders” exception, then Section 12111 unconstitutionally violated her equal protection rights. The Court was able to avoid this issue by holding that Gender Dysphoria was not covered by the “gender identity order” exception, but this issue may surface in future cases.

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