

# Legal Update & Resolution R-1516-65

City Council Conference  
December 8, 2015

# Norman Human Rights Commission

- Quarterly meeting on October 26, 2015
- Requested a Legal update of sex discrimination jurisprudence grounded in disparate treatment due to sexual orientation & gender identity
- Asked that the Legal Update be forwarded to Council with a Draft Resolution addressing issues presented
- Addresses City policies & Civil Rights - Ch. 7 of Norman City Code of Ordinances

# Review of Federal Law

- **Federal Employment** – Executive Orders (EO)
- **Housing** – Dept. of Housing & Urban Development (HUD)
- **Employment** – Equal Employment Opportunity Commission (EEOC)
- **Federal Courts** – Supreme Court of the United States (SCOTUS) & other federal courts





# Executive Order 13672

July 21, 2014

- Federal Civilian Employees
  - Added **gender identity** protection against discrimination to existing protection against **sexual orientation** discrimination
- Employees of Federal Contractors
  - Added both **sexual orientation** and **gender identity** protection against discrimination

# HUD - Equal Access Rule



- 77 Federal Register 5662 - February 3, 2012
- “to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status”
- Eligibility for HUD-assisted or -insured housing must be made without regard to **actual** or **perceived** sexual orientation, gender identity, or marital status



# EEOC



- Federal agency that enforces federal laws prohibiting unlawful discrimination in employment
- Jurisdiction over federal government agencies and private employers with more than 15 employees
- December 2012, Strategic Enforcement Plan – priority to cover LGBT individuals under Title VII sex discrimination provisions

*Baldwin v. Foxx*

(EEOC Appeal No. 0120133080) - July 15, 2015

- Whether the employer relied on sex-based considerations or took gender into account
- Sexual orientation discrimination is sex discrimination “because it necessarily entails treating an employee less favorably because of the employee’s sex”

*Macy v. Dep't of Justice*  
(EEOC Appeal No. 0120120821) - April 20, 2012

- Sex discrimination includes discrimination based on gender identity
- Limited Bona Fide Occupational Qualification exception

# SCOTUS

- *Price Waterhouse v. Hopkins* (1989)
  - sex or gender stereotypes
- *Oncale v. Sundowner Offshore Servs.* (1998)
  - same-sex harassment
- *Obergefell v. Hodges* (2015)
  - same-sex marriage



# Other Federal Courts – Gender Identity

- *Rosa v. Parks W. Bank & Trust Co.* (1<sup>st</sup> Cir. 2000)

- sex discrimination against a transgender plaintiff who was denied a loan application because biological male was dressed in traditionally female attire

- *Smith v. Salem* (6<sup>th</sup> Cir. 2004)

- Title VII prohibits discrimination against transgender individuals based on gender stereotyping

- *Glenn v. Brumby* (11<sup>th</sup> Cir. 2011)

- transgender female was discriminated against based of her sex by terminating her because she was transitioning from male to female

- A person is considered “transgender precisely because of the perception that his or her behavior transgresses gender stereotypes.”

## Other Federal District Courts Sexual Orientation



- *Hall v. BNSF Ry. Co.* (W.D. Wash. 2014)
  - Same sex marriage partner not afforded health care benefits
- *Centola v. Potter* (D. Mass. 2002)
  - Stereotypes about same sex relationships are directly related to our stereotypes about the proper roles of men and women



# 10<sup>th</sup> Circuit Court of Appeals

- Federal appellate jurisdiction over Oklahoma
- *Medina v. Income Supp. Div.* (2005)
  - sexual orientation is not a protected class
- *Etsitty v. Utah Transit Auth.* (2007)
  - transsexuals not a protected class, but . . .
- - “like all other employees,” TITLE VII protection against sex discrimination extends to transsexual employees “if they are discriminated against because they are male or because they are female”

*U.S.A. & Dr. Rachel Tudor v. Southeastern Okla. State Univ.*  
Western District of Oklahoma – 7/10/15 ruling

- Professor alleged denied tenure because of her transition from male to female
- DOJ Plaintiff; OAG representing University
- Denied State's Motion to Dismiss relying on *Etsitty's* ruling that transsexuals are not a protected class
- "Here it is clear that Defendants' actions . . . occurred because she was female, yet Defendants regarded her as male."
- Allegations were based on Defendants' "dislike of her presented gender"

# 10<sup>th</sup> Circuit & WD Case law

- Sexual Orientation and Gender Identity have not been recognized as protected groups under Title VII
- However, legal reasoning in these cases focuses on discrimination resulting from use of assumptions or stereotypes associated with sex
- More clarity in this federal jurisdiction may come with the 10<sup>th</sup> Circuit's review of the *Tudor v. SEOSU* case

# Resolution R-1516-65

- Norman Human Rights Commission requested a Resolution reflecting recognition of developments in federal law to be applied to City policy and Ordinance administration
- Area the City can most effectively impact is in administration of City personnel policies
- More effective remedies in other areas lie in federal courts or other agencies
- Resolution is primarily to be a policy statement
- Don Holladay and the Mayor assisted in finalizing the draft last Friday
- Staff believes the draft Resolution meets the spirit of the NHRC's request

# Resolution R-1516-65

- Acknowledges stated policy in the City of Norman Civil Rights Ordinance in Chapter 7 of the City Code passed in 1986
- Acknowledges Resolution R-0809-12 – NLC - Inclusive Community
- Acknowledges Federal law developments regarding same-sex marriage
- Acknowledges interpretation and application of Chapter 7 to prohibit discrimination based on the use of assumptions and stereotypes associated with sexual orientation or gender identity would be consistent with the Federal law reviewed
- Directs City Manager to administer City personnel policies and the provisions of Chapter 7 of the Norman City Code in such a manner that respects Council's policy guidance to guard against use of assumptions or stereotypes associated with sexual orientation and gender identity
- Requires notice of the Resolution to be made accessible

- Questions
- Comments
- Direction

