

Sex Discrimination Claims by Higher Ed Employees Viable Under Title IX

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Title IX prohibits discrimination based on sex against any person, not just students. Although federal courts are split, the First Circuit has held that a Title VII claim does not preempt a plaintiff's Title IX claim. When an employee of an institution of higher education gives notice of sex discrimination or sexual harassment, the institution, and any affiliated entities subject to Title IX, should be prepared to defend claims of employment discrimination under both Title VII and Title IX.

Although Title VII and Title IX both address sex discrimination in employment, the statutes differ in a few key areas. Under Title VII, plaintiffs must exhaust their administrative remedies prior to filing a claim in court. No such requirements exist under Title IX, potentially opening the door for claims typically barred by a shorter administrative statute of limitations. Likewise, although Title VII claims are limited in the amount of damages available to a plaintiff, Title IX claims have no damages cap.

However, while a Title VII plaintiff must show that a supervisor engaged in discriminatory conduct or that the employer was negligent in preventing the discriminatory conduct of a coworker, a Title IX plaintiff must meet a higher standard for liability, showing that the institution was "deliberately indifferent" to known acts of discrimination which occur under its control.

Finally, although neither Title VII nor Title IX authorizes suit against individual school officials, institutions should be aware that federal agencies have a right to withdraw their federal funding to the educational institution if a violation of Title IX is found.

CLIENT TIP

Institutions of higher education should consider consulting with legal counsel to ensure their employee handbooks and other employment policies comply with the latest discrimination and sexual harassment laws.

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