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Court Holds Title IX Applies to Hospital Residency Program

The U.S. Court of Appeals for the Third Circuit held recently that Title IX of the Education Amendments of 1972 (“Title IX”)—which prohibits sex discrimination in the “education programs or activit[ies]” of entities receiving federal financial assistance—can apply to residency programs at hospitals. The ruling may profoundly impact how hospitals respond to complaints of sex discrimination (including sexual harassment) by resident physicians and necessitate that hospitals comply with federal Title IX regulations and guidance. The ruling also opens the door for residents who experience sex discrimination to sue under Title IX, thereby avoiding the complex administrative exhaustion process required to file a similar claim under Title VII of the Civil Rights Act of 1964, which generally governs sex discrimination in the workplace.

Residency Programs Can Be An “Education Program or Activity”

In *Jane Doe v. Mercy Catholic Medical Center*, the plaintiff participated in an accredited residency program at Mercy Catholic Medical Center. The plaintiff alleged that Mercy had an affiliation agreement with Drexel University’s College of Medicine. As part of her residency in diagnostic radiology, the plaintiff alleged that she was required to attend daily lectures and case presentations and had to take a mandatory physics class taught on Drexel’s campus. The plaintiff alleged she was sexually harassed by the director of Mercy’s residency program and that Mercy retaliated against her when she complained. According to the plaintiff, she eventually resigned from the program to avoid being terminated in retaliation for raising her concerns.

Instead of filing a charge of employment discrimination against Mercy with the Equal Employment Opportunity Commission (EEOC) under Title VII, the plaintiff instead filed suit seeking to recover under Title IX, alleging quid pro quo and hostile environment harassment, as well as retaliation. The district

court dismissed the plaintiff's Title IX claims, concluding that a residency program is not an "education program or activity" under Title IX and that, even if it was, the plaintiff, could not use Title IX to circumvent the procedural exhaustion requirements in Title VII that apply to sex discrimination claims arising in an employment context, a view taken by the Fifth Circuit and other circuit courts. On appeal, the Third Circuit acknowledged that the plaintiff likely fell into the category of "employee" protected by Title VII, and that Title VII requires a plaintiff-employee to exhaust certain administrative remedies prior to filing suit. Nonetheless, the Third Circuit held that Title VII does not provide the exclusive remedy for the plaintiff's alleged sex discrimination and that she was free to proceed under Title IX despite failing to file a pre-suit charge of discrimination with the EEOC.

With regard to the Title IX claim, the Third Circuit reversed the district court's decision and ordered that it reconsider the claim. In concluding that a residency program can be an "education program or activity," the Third Circuit first noted that the Civil Rights Restoration Act (CRRA) of 1987 amended Title IX to make clear that "all of the operations" of certain classes of federal funding recipients are "programs and activities" which, if they are educational in nature, are subject to Title IX's prohibition on sex discrimination. Among those classes of funding recipients, held the court, are private organizations "principally engaged in the business of providing education, health care, social services, or parks and recreation."

The court then proceeded to determine whether Mercy's residency program would be an "education program or activity." The court held that a program or activity is "educational" if it has "features such that one could reasonably consider its mission to be, at least in part, educational." The court explained that this test is to be applied based on whether the "defendant-entity's questioned program or activity has educational characteristics," not on the plaintiff's subjective characterization of whether he or she learned something from the program. The court identified several factors that could support a finding that a program or activity is educational in nature:

The program is incrementally structured through a particular course of study or training, whether full or part time;

The program allows participants to earn a degree or diploma, or qualify for a certification or certification examination, or pursue a specific occupation or trade beyond mere on-the-job training;

The program provides instructors, examinations, an evaluation process or grades, or accepts tuition;
or

The entities offering, accrediting, or otherwise regulating a program hold it out as educational in nature.

In light of its legal determinations, the court concluded that Mercy could be subject to Title IX, noting in this case that the plaintiff alleged sufficient facts to show: (1) the program required her to learn and train under faculty, attend lectures, help present case presentations under supervision, participate in a physics class on a university campus, and sit for annual examinations; (2) Mercy held the residency program out as a “structured educational experience,” and had the plaintiff completed the program, she would have been able to take and potentially obtain a certification from the American Board of Radiology; and (3) Mercy was affiliated with Drexel University’s medical school, a “university program plausibly covered by Title IX” in its own right. The affiliation between Mercy and Drexel included courses taught on Drexel’s campus and Mercy’s provision of the “clinical bases” for Drexel’s emergency medicine residency.

Because the question had not been disputed below, the Third Circuit assumed without deciding that Mercy received federal financial assistance triggering Title IX coverage (specifically, Medicare payments) and that the plaintiff had, therefore, pled a facially-valid Title IX claim based on the residency director’s offer of a quid pro quo, Mercy’s failure to address the conduct leading to a hostile environment, and the alleged retaliation that forced the plaintiff to resign.

What This Means to You

The Third Circuit’s decision has an immediate effect on hospitals with residency programs in Delaware, New Jersey, Pennsylvania and the U.S. Virgin Islands because the decision is binding on the district courts in those states. Under Mercy’s reasoning, those residency programs may qualify as education programs and activities subject to Title IX, especially if the sponsoring hospital has an affiliation agreement with a college or university indisputably subject to Title IX. Other jurisdictions also may adopt the Third Circuit’s reasoning, increasing the risk nationwide that medical residents subject to sex discrimination will file suit against the hospital under Title IX. An immediate result is that hospitals may not have warning of an impending lawsuit as they would through Title VII’s EEOC process.

Since 2011, federal agencies such as the Department of Education have promulgated a host of formal and informal guidance concerning an institution’s obligation to prevent, investigate and remediate sex discrimination (including sexual harassment and sexual violence) in education programs and activities covered by Title IX. While academic medical centers that are part of or closely aligned with a university system may already be aware of and in compliance with this guidance, private hospitals that merely operate residency programs likely are not. The guidance covers myriad topics, such as training programs to prevent sexual harassment and sexual violence, the components of an effective grievance policy for investigating and remediating sex discrimination, interim measures taken during the pendency of an investigation, trauma sensitivity and timelines for promptness.

Plaintiffs filing Title IX claims against colleges and universities have, for some time, argued that the Department of Education's guidance sets a standard of reasonableness and that an institution's failure to abide by such guidance constitutes deliberate indifference subjecting the institution to Title IX liability. Plaintiffs may, in light of *Mercy*, attempt to extend the reach of such guidance to residency programs. If successful, such an effort would require substantial investment by hospitals into building Title IX compliance infrastructure, including policy revisions, training for residents and staff, development of an effective investigation office, and provision of support and assistance services to reported victims of sexual harassment and sexual violence.

At a minimum, hospital administrators responsible for managing residency programs should familiarize themselves with *Mercy* and, working with counsel, determine the likelihood their program is covered by Title IX. If there is a high likelihood the program is covered, the hospital may wish to take proactive steps to meet federal Title IX expectations so as to minimize the risk of future litigation and an adverse verdict. Roughly 700 hospitals throughout the country operate residency programs accredited by the Accreditation Council for Graduate Medical Education.

Contact Us

For more information on Title IX compliance and how the Third Circuit ruling may impact your organization, contact Derek Teeter, Lorinda Holloway or another member of Husch Blackwell's Healthcare, Life Sciences & Education team.