



The federal courthouse in Detroit. Getty Images / Bill Pugliano

WASHINGTON — The Equal Employment Opportunity Commission filed lawsuits Thursday against two companies accused of discriminating against transgender employees, the first time the federal government has brought suit under the Civil Rights Act of 1964 to protect transgender workers.

The two complaints, filed in federal courts in Florida and Michigan, are the latest — and most ambitious — steps in a series of aggressive moves taken by the commission in the past several years to advance LGBT rights under existing laws.

“This enforcement priority aims to give full force to Title VII’s prohibition against sex discrimination to ensure it helps eliminate unlawful discriminatory barriers to LGBT applicants and employees,” EEOC General Counsel David Lopez said in a statement to BuzzFeed News. “It seeks to ensure employers aren’t considering irrelevant factors, like gender-based stereotypes or gender identity, in making employment decisions.”

Thursday’s actions and much of the work that preceded it followed from an April 2012 decision of the commission — a five-member board that controls the decisions of the independent agency — holding that discrimination against transgender people is “sex discrimination” within the meaning of the phrase in Title VII’s employment discrimination ban.

That ruling, in a claim brought by Mia Macy against the Bureau of Alcohol, Tobacco, Firearms and Explosives, was made in the “federal sector,” meaning it served as a precedent in federal employees’ discrimination claims. It followed a small, but growing, area of case law — including, notably, in the two federal appeals courts that hear appeals from Michigan and Florida — supporting the argument that anti-transgender discrimination is sex discrimination.

As a decision of the commission, though, *Macy v. Holder* also represented the interpretation of the commission in its own enforcement activities in the private sector. That means “the EEOC has instructed its private sector investigators that, in accordance with the Commission’s *Macy* decision, discrimination against an individual because that person is transgender is discrimination because of sex in violation of Title VII,” according to an EEOC memo.

In Thursday's cases, the EEOC argues that Amiee Stephens and Brandi Branson deserve restitution for back pay, reinstatement or front pay, and punitive damages for the discrimination they faced. EEOC is also seeking additional remedies to protect against future discrimination against other people.

Stephens had worked at R.G. & G.R. Harris Funeral Home, Inc., in Michigan as a funeral director/embalmer for nearly six years when she informed her employer and co-workers in 2013 that she was transitioning from male to female and would begin "dress[ing] in appropriate business attire at work as a woman from then on." Within two weeks of her announcement, according to the complaint, the funeral home owner "fired Stephens, telling her that what she was 'proposing to do' was unacceptable."

Branson's case, a senior EEOC staffer acknowledged, is a less clear-cut claim. In 2010, Branson, who then presented as male, was recommended for and hired as the director of hearing services at Lakeland Eye Clinic in Florida — a position in which she exclusively relied about referrals from the company's eye doctors. When Branson began "wearing feminine attire to work, including make-up and women's tailored clothing" about six months later, the complaint claims that other employees snickered. She was soon thereafter confronted about the changes by her employer, at which point she acknowledged that she was transitioning from male to female.

After that, according to the complaint, managers and employees began "ma[king] derogatory comments" about her appearance and most of the eye doctors stopped referring patients to her. Soon thereafter, she was fired, being told that her position was being eliminated. Two months later, however, the complaint states that the company "hired a replacement for Branson" — "a male employee who conformed to traditional male gender norms."

Although these two cases are the first to make it to the lawsuit phase, the EEOC official noted that the EEOC's own process meant that it would take some time after the *Macy* decision to reach this point. Under the EEOC's process, it examines any "charge" of discrimination brought to it. It then issues either a "right to sue" determination, meaning the agency is not going forward with its process, or a finding of "reasonable cause" that there was discrimination. At that point, the agency offers conciliation to try and resolve and discrimination claims before going to court. If that fails, it either litigates the matter itself or, again, issues a "right to sue" letter.

In a discussion about the pending litigation, the EEOC official described the lawsuits as "business as usual" in one sense because they track the *Macy* decision and amicus curiae — or, "friend of the court" — briefs the agency has sought to file before and since the *Macy* decision. In another sense, though, the official said the decision was "historic" because the cases are the first time the agency has filed these types of lawsuits.

"These cases build on the amicus brief my office prepared in *Pacheco v. Freedom Buick GMC Truck*, which the Commission approved, and the Commission's groundbreaking ruling in 2012 in *Macy v. Holder*, and recent case law," Lopez, the EEOC's general counsel, said in his statement to BuzzFeed News. "These cases also fall squarely within the EEOC's current Strategic Enforcement Plan, which includes 'coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply.'"

Under the EEOC's Strategic Enforcement Plan, which was adopted in December

2012, “coverage of LGBT individuals under Title VII” was included as a “priority” for the commission. In addition to the direct enforcement of *Macy* within the federal sector — which addresses anti-transgender discrimination but not anti-LGB discrimination — the EEOC has expanded its enforcement of Title VII’s ban on sex stereotyping to allow for more complaints resulting from anti-LGB discrimination to proceed.

Additionally, last month the EEOC asserted in a now-binding opinion in the federal sector — similar to the *Macy* case — that Title VII’s sex discrimination prohibition often can include protections for people who are discriminated against because of their sexual orientation.

“While Title VII’s prohibition of discrimination does not explicitly include sexual orientation as a basis, Title VII prohibits sex discrimination, including sex-stereotyping discrimination and gender discrimination,” the commission wrote in its August 20 decision in *Complainant v. Jeh Johnson*, citing *Macy*. “The term ‘gender’ encompasses not only a person’s biological sex, but also the cultural and social aspects associated with masculinity and femininity. Moreover, we have [previously] held that sex discrimination claims may intersect with claims of sexual orientation discrimination.”

The changes have had real results, the agency claims. According to the EEOC, in 2013 the commission received 834 charges alleging sexual orientation-based discrimination, and 199 charges alleging gender identity-based discrimination. In the first half of 2014, it received 459 charges alleging sexual orientation-based discrimination, and 81 charges alleging gender identity-based discrimination.

## Read the Michigan [complaint](#):

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## Federal Government Sues Companies Over Anti-Transgender Discrimination

Tagged: eec, civil rights act, lgbt, title vii, transgender discrimination