



## **SECOND CIRCUIT UPDATE: OCTOBER 2005**

*This bulletin provides an update of recent employment law decisions for employers in Connecticut, New York, and Vermont, which are all served by the United States Court of Appeals for the Second Circuit. Please contact us if you have any questions about these decisions or about their effects on your organization.*

### **Public Employees Do Not Check Their Constitutional Rights At the Door**

Although employers have a right to expect loyalty from their employees, public employers must balance employees' duty of loyalty with their constitutional rights. In one recent case, the Second Circuit found that a city government violated its employee's First Amendment rights in terminating her employment.

Gronowski worked as clerk for the City of Yonkers, New York. During her employment, she began campaigning for the mayor's opponent in the election. Her supervisor warned her about her political activities on several occasions and advised her that the mayor was not happy. Shortly thereafter, her employment was terminated.

Gronowski filed a civil rights suit, arguing that she was terminated in retaliation for backing the mayor's political opponent in the election, in violation of her First Amendment rights. In a split decision, the court found there was sufficient evidence to support the jury's award of damages. The court reasoned that Gronowski's political activities were a type of political speech that addressed a matter of public concern. As such, her activities were constitutionally protected. *Gronowski v. Spencer*, 424 F.3d 285 (2d Cir. 2005).

### **Sexual Stereotyping is Sex Discrimination**

Title VII does not protect employees from discrimination based on sexual orientation. However, in one recent case the Second Circuit explained that Title VII does protect employees from one closely related form of discrimination—sexual stereotyping.

In this case, Plaintiff worked at a hair salon in New York City. Plaintiff was a self-described lesbian who did not conform to gender norms of femininity in that she

appeared more masculine than the stereotypical woman. She argued that her employer discriminated against her because she did not conform to gender norms, i.e. by failing to dress and behave in a manner stereotypically considered to be appropriate for her gender.

Although the court recognized that a plaintiff can state a claim under Title VII for discrimination resulting from sex stereotyping, here the plaintiff failed to prove that her failure to conform to gender norms was the reason for her termination. Rather, plaintiff's workplace was unusual in that many of the employees did not conform to sexual stereotypes, and unconventional behavior was extolled rather than rejected. In fact, the manager was a "pre-surgery male-to-female transsexual." Since the plaintiff did not successfully complete the employer's training program, and there was no evidence that the plaintiff's termination was related to her non-feminine appearance, the employer prevailed. *Dawson v. Bumble & Bumble*, 398 F.3d 211 (2d Cir. 2005).

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