Credit: Rob Cannon Photo

Discrimination on the basis of gender identity must end

Despite existing civil rights laws, legal protection for transgender people against discrimination in the USA is inconsistent. Catherine Lhamon discusses the U.S. Commission on Civil Rights' findings on how the transgender community is subject to unlawful discrimination in schools, workplaces, healthcare and the military.

Transgender Americans can be, and distressingly frequently are, subjected to discrimination as they navigate virtually every part of their lives: from schools to workplaces to doctors' offices and hospitals, in military service and at the hands of law enforcement. This discrimination endures despite longstanding civil rights laws that are meant to guard against such discrimination.

The U.S. Commission on Civil Rights, which I chair, recently reported on employment discrimination against lesbian, gay, bisexual, and transgender (LGBT) Americans. The Commission, by majority vote, found that firing a person because of who the person is, rather than for job-performance reasons, offends the concept of equity and ought to be unequivocally unlawful. The Commission's examination reflects the persistence of discrimination against transgender Americans, including survey data showing that mistreatment and harassment, being taunted by co-workers using incorrect pronouns, and being forced to present as a gender they do not identify with, all contribute to hostile work environments for transgender workers.

Despite this clearly demonstrated need for legal protections, there is an inconsistent patchwork of prohibitions against discrimination under federal and state law, leaving many transgender Americans unprotected and without legal recourse in the face of discrimination. The absence of formal federal civil rights protections for LGBT persons has led to tortured discussions in federal cases, analyzing whether current laws protect against discrimination on the basis of gender identity. As the Commission recommended, Congress must act to protect all workers

from employment discrimination based on who they are.

"Transgender Americans are subject to dangerous harms on the basis of their gender identity."

But it is not just in workplaces that the Commission has seen evidence of discrimination on the basis of gender identity. Before I joined the Commission, the Commission spoke in favour of guidance I issued in 2016 together with the U.S. Department of Justice, while I was Assistant Secretary for Civil Rights at the Department of Education. That guidance clearly stated that schools must allow a student to participate in activities, use facilities and access housing consistent with the student's gender identity. Unfortunately, the Trump Administration withdrew the joint guidance, leaving students and schools without critical information to protect student rights and the assurance that the federal government will support these rights. The Commission has also denounced the introduction and passage of recent state laws forcing individuals to use public facilities on the basis of sex rather than gender identity, in contravention of the law and jeopardizing the dignity and safety of transgender people.

The Commission majority is alarmed by President Trump's unilateral decision to ban all transgender persons from service in the military, despite the fact that thousands of transgender troops have served in the U.S. military and numerous studies have found that it would not disrupt the function or negatively impact the safety of the armed

forces to have transgender troops serve openly.

The Commission's recent report on police practices documented that harassment by law enforcement is reported frequently by the transgender community; in one survey, 59% of transgender persons reported being stopped by police and profiled as sex workers while they were going about their daily tasks in their neighbourhood.

The Commission majority is also concerned about equality of care and treatment from healthcare providers. Although previous regulations from the U.S. Department of Health and Human Services (HHS) made clear that HHS would enforce non-discrimination laws to ensure that individuals are not barred from equal treatment on the basis of their gender identity, recent news reports suggest that HHS is considering narrowing the definition of gender to biological sex, leaving transgender people vulnerable to unlawful discrimination.

The Commission's investigations across various spheres of daily life establish that transgender Americans are subject to dangerous harms on the basis of their gender identity. All Americans must stand up for the transgender community, to correct the harms we have already witnessed and to guard against future such harms. □

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