



## THE CASE FOR INCLUSION

News and Legal Analysis on Issues Related to Diversity and Inclusion

### Is a Dependent's Gender Reassignment Covered Under Employer-Sponsored Benefits Plans?

BY TERRENCE J. BRIGGS • NOVEMBER 1, 2017

In *Tovar v. Essentia Health* (U.S. 8<sup>th</sup> Circuit Court of Appeals, 2017), Brittany Tovar sought and was denied benefits needed for her son's gender reassignment based on a diagnosis of gender dysphoria, as the Essentia health plan explicitly excluded such benefits. She appealed the denials based on the non-discrimination requirements of Title VII of the Civil Rights Act of 1964, the Minnesota Human Rights Act, and Obamacare's prohibitions on discrimination related to, among other things, sex, as set out in its section 1557.

The 8<sup>th</sup> Circuit found that Ms. Tovar lacked standing under both Title VII and the Minnesota statute because she had not been harmed (her son had). Both laws limit their reach to employees who have suffered discrimination or a cognizable harm by their employers, and the terms of neither extended such protections to Ms. Tovar's son. As the court put it, "[T]he statute prohibits employers from discriminating against employees on the basis of their protected characteristics. Tovar has not alleged that she was discriminated against on the basis of her own sex; rather, she alleges that she was discriminated against because of her son's sex. By its terms the protections of Title VII do not extend to such discrimination."

The District Court found that Ms. Tovar lacked standing to bring a discrimination claim against the health plan's administrators under Obamacare because the proper defendant was the employer, Essentia, which funded the plan and had ultimate authority to determine its provisions, and not the third-party plan administrator. The 8<sup>th</sup> Circuit disagreed and remanded the case to the District Court for reconsideration because it had not considered all of bases on which standing could be found under Article III of the Constitution.