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TRIAGE: RAPID LEGAL LESSONS FOR BUSY
HEALTH CARE PROFESSIONALS



Medical Residency Programs and Title IX Coverage

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BACKGROUND

- In *Jane Doe v. Mercy Catholic Medical Center* (2017), the Third Circuit held that a private teaching hospital's medical residency program is subject to Title IX
- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance

BACKGROUND CONT'D

- Jane Doe, a diagnostic radiology resident, alleged that she was subjected to a supervisor's improper sexual advances throughout her participation in the hospital's program
- Doe filed suit under Title IX following her dismissal from the program after she reported her concerns about the supervisor's behavior
- After the lower court dismissed her claims, she appealed to the Third Circuit

MEDICAL RESIDENCY COVERAGE UNDER TITLE IX

- “Program or activity” include “all of the operations” of the following kinds of entities, “any part of which” is extended federal funding:
 - Entire corporations or other private organizations if federal financial assistance is extended to them “as a whole”; or
 - the entity is “principally engaged” in the business of providing education or health care

PRIVATE MEDICAL RESIDENCY PROGRAMS AS EDUCATIONAL

- For purposes of Title IX coverage, a program or activity qualifies as an “education program or activity” if it has “features such that one could reasonably consider its mission to be, at least in part, educational”
- The Third Circuit outlined four characteristics to evaluate whether certain programs or activities qualify as “educational”

PRIVATE MEDICAL RESIDENCY PROGRAMS AS EDUCATIONAL CONT'D

- A program qualifies as an “education program or activity” if:
 - (A) a program is incrementally structured through a particular course of study or training, whether full- or part-time;
 - (B) a program allows participants to pursue a specific occupation or trade beyond mere on-the-job training;
 - (C) a program provides instructors, examinations, an evaluation process or grades, or accepts tuition; or
 - (D) the entities offering, accrediting, or otherwise regulating a program hold it out as educational in nature

FACTORS IDENTIFYING A PROGRAM AS EDUCATIONAL

- The Third Circuit identified the following as indicia of an education program or activity:
 - Sponsorship of a residency program accredited by the Accreditation Council for Graduate Medical Education (ACGME)
 - Requirement that residents participate in supervised practical training and in lectures;
 - Holding out residency programs as “educational in nature.”
 - Affiliation with a university program covered under Title IX

TITLE IX AND TITLE VII MAY EXIST CONCURRENTLY

- Title VII prohibits discrimination in employment based on race, color, national origin, and sex
- Medical residents may qualify as employees of teaching hospitals and are covered by Title VII
- Title VII requires plaintiffs to satisfy extensive administrative requirements before filing a lawsuit in court

KEY TAKEAWAYS

- Hospitals that are affiliated with but not controlled by educational institutions may be covered by Title IX
- In some jurisdictions, private-sector employees may pursue sex-based discrimination claims under both Title VII and Title IX
- Title IX applies to employees, not just students, of federally-funded education programs who allege sex-based retaliation claims under Title IX.
- Claims brought under Title IX do not require a plaintiff to exhaust administrative remedies prior to filing a lawsuit in court

HEALTHCARE EMPLOYER BEST PRACTICES - TITLE IX

- Organizations receiving federal funding and that are affiliated with higher education institutions or offer licensing programs should:
 - Consider identifying a staff member to serve as a Title IX Coordinator
 - Evaluate policies addressing sexual misconduct for compliance with the more stringent Department of Education guidelines
 - Review Title IX requirements set forth by the Department of Education's Office of Civil Rights, which enforces Title IX

HEALTHCARE EMPLOYER BEST PRACTICES – TITLE VII

- All private employers subject to Title VII should:
 - Review anti-discrimination and anti-harassment policies to ensure compliance with both Title VII and Title IX
 - Review internal procedures for investigating and responding to discrimination, harassment, and retaliation complaints
 - Train management personnel on addressing claims of discrimination, harassment, and retaliation

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