

TITLE IX AND TITLE VII UPDATES: NO CHANGES DESPITE RECENT STATEMENTS BY TRUMP ADMINISTRATION

In recent weeks, the Trump administration's positions on both Title VII and Title IX of the Civil Rights Act of 1964 have been in the news.

On July 14, 2017, Education Secretary Betsy DeVos met with groups representing survivors of sexual assault, students who had been falsely accused and disciplined under Title IX, and representatives of educational institutions to discuss current Title IX enforcement rules regarding sexual assault. These meetings and statements by Secretary DeVos have been widely interpreted to signal a shift in the Department of Education's focus in Title IX enforcement to provide greater protections to those accused of sexual assault.

Then, on July 26, 2017, the U.S. Department of Justice (DOJ) filed an amicus brief in a New York case concerning an employee's claim of discrimination because of his sexual orientation under Title VII. In the brief, the DOJ took the position that Title VII does not prohibit employers from discriminating against an employee based on the employee's sexual orientation. This was a change in position from that taken by the DOJ in the Obama administration.

Employers and educational institutions watching these developments may wonder what this means in terms of their own policies. In the short term, the answer is "Nothing." Neither the Secretary of Education's statements nor the position taken by the DOJ in a court case constitute binding changes in the law. While they do throw doubt on how Title VII and Title IX will be interpreted by the Trump administration, they are not yet binding changes in the law.

Moreover, California employers and educational institutions are still bound by California law. The California Fair Employment and Housing Act (FEHA) explicitly prohibits discrimination in employment based on sexual orientation as well as sex, gender, gender identity and gender expression (Gov. Code § 12940).

Similarly, regardless of any changes that the U.S. Department of Education makes in federal policy, California schools are still subject to the Sex Equity in Education Act (Ed. Code § 221.5, et seq.). Furthermore, there is a bill pending in the Assembly, SB 169, which will enshrine certain of the federal Title I standards developed during the Obama administration into California state law. SB 169 is intended to ensure that sexual violence is included in the definition of sexual harassment in the education code and that all California K-12 schools and colleges and universities implement federal regulations regarding sexual harassment and sexual violence prevention, including adopting and publishing grievance procedures for promptly and equitably resolving complaints.

Keenan will continue to monitor developments in both state and federal law on these issues. Meantime, employers and educational institutions should continue to enforce their policies and procedures regarding workplace discrimination and sexual assault.

Please contact your Keenan Account Manager for questions regarding this *Briefing*.

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