

# 2016 HOSPITALITY LAW CONFERENCE

FEBRUARY 22-24, 2016

## LESSONS LEARNED IN HUMAN RESOURCES FROM POP CULTURE'S 2015 MEMORABLE MOMENTS

**Presented by:**

Sylvia St. Clair, *Associate* | Faegre Baker Daniels



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# PRESENTER



## **Sylvia B. St. Clair**

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Sylvia Bokyung St. Clair, an attorney with Faegre Baker Daniels in Chicago, focuses her practice on labor and employment law. She has more than 10 years of experience in all areas of hospitality operations, including food and beverage, sales and marketing, and operations. Sylvia regularly defends and advises hospitality employers and management in contract disputes, personal injury claims and human resources issues.



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# TRANSGENDER ISSUES IN THE WORKPLACE



## Introducing Caitlyn Jenner

*Vanity Fair's* 22-page cover story features stunning Annie Leibovitz photos of Caitlyn Jenner, formerly known as Bruce, along with revealing new details.

BY VANITY FAIR | PHOTOGRAPHS BY ANNIE LEIBOVITZ

**N**EW YORK, N.Y.—Speaking publicly for the first time since completing gender transition, Caitlyn Jenner compares her emotional two-day photo shoot with Annie Leibovitz for the July cover of *Vanity Fair* to winning the gold medal for the decathlon at the 1976 Olympics. She tells Pulitzer Prize-winning *V.F.* contributing editor and author of *Friday Night Lights* Buzz Bissinger, “That was a good day, but the last couple of days were better. . . . This shoot was about my life and who I am as a person. It’s not about the fanfare, it’s not about people cheering in the stadium, it’s not about going down the street and everybody giving you ‘that a boy, Bruce,’ pat on the back, O.K. This is about your life.”



# TRANSGENDER ISSUES IN THE WORKPLACE

*Macy v. Holder*, Appeal No. 0120120820, 2012 WL 1435995, at \*7 (April 20, 2012): *The EEOC argued that the employer has engaged in disparate treatment related to sex*

[r]egardless of whether an employer discriminates against an employee because the individual expressed his or her gender in a non-stereotypical fashion, because the employer is uncomfortable with the fact that the person has transitioned or is in the process of transitioning from one gender to another, or because the employer simply does not like that the person is identifying as a transgender person.

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# TRANSGENDER ISSUES IN THE WORKPLACE

## EEOC's Strategic Enforcement Plan (SEP) 2013-16

- Third enforcement priority
- “address emerging and developing issues” including “coverage of lesbian, gay, bisexual and transgender individuals under Title VII’s sex discrimination provisions, as they may apply.”

EEOC instructs its investigators and attorneys that lesbian, gay, and bisexual individuals may bring valid Title VII sex discrimination claims and the EEOC should accept these charges

# TRANSGENDER ISSUES IN THE WORKPLACE

*EEOC v. Lakeland Eye Clinic, P.A.*, No. 14-cv-2421 (M.D. Fla. Sept. 25, 2014) - \$150,000

*EEOC v. R.G. & G.R. Harris Funeral Homes Inc.*, No. 14-cv-13710 (E.D. Mich. Sept. 25, 2014)

Justice Department will take the position that the protections of Title VII will extend to claims of discrimination based on individual's gender identity, including transgender status. (Dec. 15, 2014).

*Lusardi v. McHugh*, EEOC No. 0120133395 (Apr. 1, 2015).

*EEOC v. Deluxe Financial Services Corp.*, No. 15-cv-02646 (D. Minn. June 4, 2015) - \$150,000

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# PREVENTING DISCRIMINATION

- Consider gender neutral uniforms or **eliminate** dress specific and appearance rules
- Keep transitioning information private and confidential
- Eliminate gender specific assignments
- Implement written policies to ensure ALL employees have prompt access to appropriate sanitary facilities



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# APPROPRIATE SANITARY FACILITIES

Say “NO” to segregated facilities apart from other employees. *Lusardi v. McHugh*, EEOC Appeal No. 0120133395 (Apr. 1, 2015).

## OPTIONS:

1. Employee chooses most appropriate and safest option;
2. Single-occupancy gender-neutral (unisex); and
3. Multiple-occupant, gender-neutral facility with lockable single occupancy stalls.



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# RELIGIOUS ACCOMMODATIONS

WHEN DOES YOUR RELIGION LEGALLY EXCUSE YOU FROM DOING PART OF YOUR JOB?

The Washington Post

Morning Mix

## Muslim flight attendant suspended for refusing to serve alcohol files federal complaint

By Justin Wm. Moyer September 8, 2015 [Follow @Justinwmoyer](#)

CNN U.S. » Crime + Justice | Energy + Environment | Extreme Weather | Space + Science

## Kim Davis' lawyers file new appeal over same-sex marriage license order

Debutquoy-Dodley, CNN  
November 4, 2015

sections [cnsnews.com](#)

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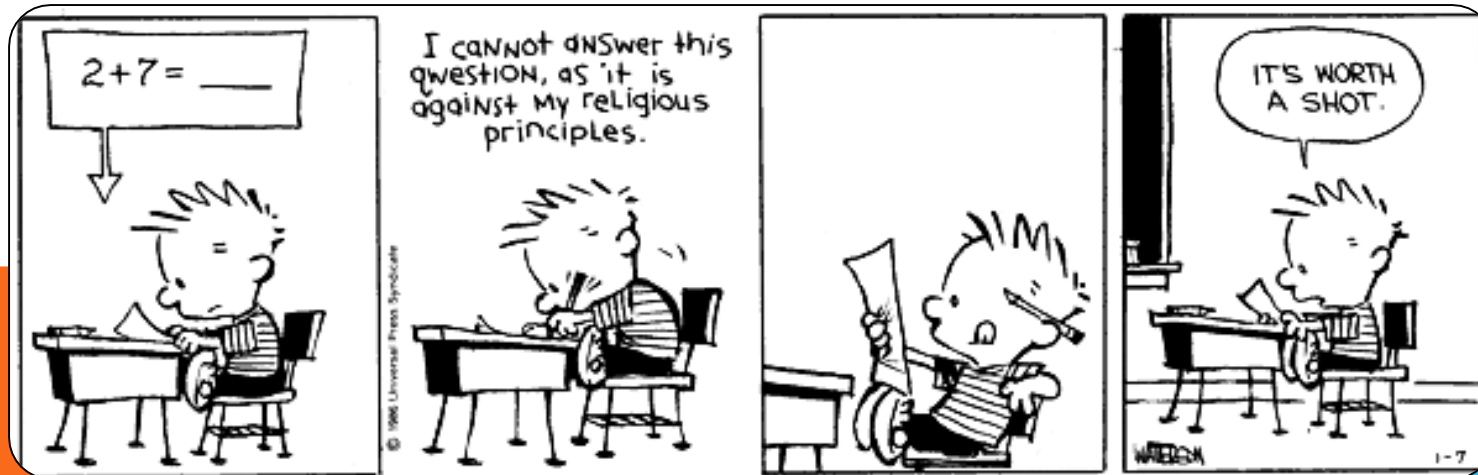
## Muslim Truck Drivers Fired for Refusing to Deliver Beer Awarded \$240K

By Mairead McArdle | November 9, 2015 | 2:56 PM EST



# CAN RELIGION EXCUSE AN EMPLOYEE FROM PERFORMING ALL OR SOME OF THE FOLLOWING TASKS?

- Server or room service attendant refusing to serve or deliver alcohol
- Housekeeper requesting Saturdays off
- Front desk agent refusing to issue a room key to a same-sex couple
- Employee refusing to take off a headscarf pursuant to her religious obligations that conflict with the employer's dress policy



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# TITLE VII

- Employers are required to take steps to “reasonably accommodate” an employee’s religious beliefs unless such an accommodation would create an undue hardship on the conduct of business
- “Undue hardship” - when the accommodation results in more than *de minimus*, or minor, cost to the employer or when the required accommodation would place an unfair burden on fellow employees

# RELIGIOUS BELIEF MUST BE SINCERELY HELD

Personal preference v. deep religious conviction?

- Demand to have Fridays off?
- Longer breaks?

Religious belief is broadly defined and can include individual beliefs unique to the individual.

- Refusal to take a blood test?

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# ACCOMMODATE ALL REQUESTS?

- Religious dress or grooming requests can only be denied due to safety, security or health concerns in the workplace.
- Making a good faith effort to accommodate or showing undue burden are still defenses to such claims.
- An employer need not provide employee's preferred accommodation if an equally effective alternative is offered.





# EQUAL PAY ACT DISPARITY IN WAGES

HOME Q SEARCH

ARTS

*The New York Times*

## Jennifer Lawrence Speaks Out Against Gender Pay Inequality

By KATIE ROGERS OCT. 13, 2015



# EQUAL PAY ACT/TITLE VII

Equal Pay Act, 29 U.S.C.A. § 206(d)(1): “. . . equal skill, effort, and responsibility . . . Under similar working conditions”

## EEOC's Strategic Enforcement Plan (SEP) 2013-16

- Listed as a top priority: Target compensation systems and practices that discriminate on the basis of **gender**.

## EEOC proposes revised EEO-1 Report

- Employers with **100 or more employees** may be required to submit wage data classified by **gender, race, and ethnicity**

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# CA NEW FAIR PAY ACT



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# TAKEAWAYS

- **Reasonable Pay System**: (1) seniority system; (2) merit system; (3) system which measures earnings by quantity or quality of production; (4) factors other than sex, such as education, training, or experience.
- Conduct a **wage audit/review** of employee pay equity;
- Review all pay and **compensation-related policies** and procedures: job descriptions, employee handbooks, review and evaluation protocols; and
- Provide **internal training** to members of management who make decisions regarding employees' pay and compensation.





# HIRING BARRIERS & BACKGROUND CHECKS

DISCRIMINATION AND BIAS BASED ON PAST ARREST  
AND CONVICTION RECORDS

**BAN THE**

**B**  **X**

12. HAVE YOU EVER BEEN  
CONVICTED OF A CRIME?  
CHECK ONE:  YES  NO



# NATIONAL LANDSCAPE

- 19 states and Washington D.C. and over 100 cities and countries have adopted fair hiring policies
- Seven states have removed the conviction history question on job applications for private employers
  - HI, IL, MA, MN, NJ, OR, and RI
- No federal law that prohibits employers from asking applicant's about their criminal history

# EEOC'S STRATEGIC ENFORCEMENT PLAN

## EEOC's Strategic Enforcement Plan (SEP) 2013-16

Eliminating barriers in recruitment and hiring is the EEOC's top Commission enforcement priority

***Disparate treatment:*** treat an applicant different because of his race, national origin or another protected basis

***Disparate impact:*** does it significantly disadvantage certain individuals and does not help the employer decide if the person is likely a reasonable, reliable and safe employee

- Is the criminal conduct exclusion job-related and consisted with business necessity under Title VII?

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# TAKEAWAYS

- Determine which laws apply to your company
  - Consult state, local law, and EEOC guidelines
- Revise and reprint job applications and consider removing the question and inquiring into history at a later point in the hiring process
- Update the company's policies
- Train hiring managers





**QUESTIONS NEVER TO ASK AN  
APPLICANT**



# QUESTIONS NEVER TO ASK APPLICANTS

- Where are you from?
- What year did you graduate?
- Do you plan to have a family?
- How do you spend your free time?
- Do you have any disabilities we should know about?

**HOTEL**



**LESSONS LEARNED FROM  
WORKING AT A HOTEL**



# DON'T RESERVE POOL CHAIRS



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# BE REASONABLE WITH YOUR REQUESTS AND COMPLAINTS



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# TIP YOUR HOUSEKEEPERS



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