



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Houston District Office**

Total Plaza  
1201 Louisiana Street, Suite 600  
Houston, TX 77002-9776  
Intake Contact Center: (800) 669-4000  
Intake Contact Center TTY: (800) 669-6820  
Houston Status Line: (866) 408-8075  
Houston Direct Dial: (713) 651-4900  
TTY (713) 651-4901  
FAX (713) 651-4902

460-2012-02905

Amended Charge No.

Leyth O. Jamal  
214 East 111<sup>th</sup> Street, Apt. 7  
New York, NY 10029

Charging Party

Saks Incorporated  
Attention: Ms. Sarah J. Somerset  
Associate Counsel,  
Labor & Employment  
12 East 49<sup>th</sup> Street  
New York, NY 10017

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the above cited charge. All requirements for coverage have been met.

On July 2, 2012, Charging Party, Leyth O. Jamal, filed a charge of discrimination against Respondent, Saks Fifth Avenue, alleging sex discrimination and harassment because of sex, male, and because of not conforming to the Employer's sexual stereotypes. Jamal was required to use the men's restroom. Also, the charge alleges Jamal was subjected to retaliation for reporting harassment in violation of Title VII of the Civil Rights Act of 1964, as amended (Title VII). On September 4, 2012, the charge was amended to include the allegation of retaliatory discharge.

Respondent denied all allegations of discrimination.

Examination of the evidence establishes that at birth Charging Party's assigned sex was male and that during employment with Respondent, Charging Party's gender identity was female. The record of evidence supports Charging Party's allegations that she was subjected to harassment and intimidation because she did not conform to stereotypical male behavior in the workplace. Testimonial evidence indicates Charging Party was subject to harassing and belittling treatment by coworkers, her supervisor and the HR manager. Among other things, she was called a prostitute, geisha and tranny (transvestite), subjected to physical threats and to ill-treatment in front of customers. Charging Party reported some of the harassment to her supervisor. The evidence indicates that Charging Party suffered mental trauma as a result of the continual abuse. Respondent could provide no documented records to support their position that Charging Party's complaints were addressed and resolved. The investigation revealed that Respondent was aware

of the harassment based on sex and gender stereotypes and failed to take prompt and effective corrective action to halt the harassment.

In addition, the Commission's investigation identified an unlawful restroom policy or practice. The investigation revealed that Charging Party identified as a transgender woman and attempted to use the female restroom. Respondent required Charging Party to use the restroom assigned to males, based on Charging Party's sex assigned at birth. Respondent's policy or practice of requiring an employee to use the restroom of his/her present biological sex rather than the employee's present gender identity violates Title VII.

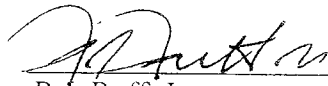
Based upon the evidence, the Commission concludes that Charging Party was subjected to intimidation and harassment based on sex (male), and because of failure to conform to stereotypical male behavior in the workplace, in violation of Title VII. Further, the Commission concludes that Respondent has an unlawful policy or practice which denies employees access to restroom facilities consistent with their gender identity, in violation of Title VII. No finding is being made regarding any other issue alleged in the charge.

This determination does not conclude the processing of this charge. EEOC will begin conciliation efforts to resolve all matters where there is reason to believe that violations have occurred. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. The confidentiality provisions of Title VII and Commission Regulations apply to information obtained during conciliation.

If the Respondents decline to discuss settlement or when, for any other reason, a settlement acceptable to the Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to the aggrieved persons and the Commission. A Commission representative will contact each party in the near future to begin conciliation.

On Behalf of the Commission:

2/12/2014  
Date

  
\_\_\_\_\_  
R.J. Ruff, Jr.  
District Director