

## **Chavez v. Credit Nation Auto Sales, LLC**

Our client, Jennifer Chavez, alleged discrimination against her Georgia employer, Credit Nation Auto Sales. She suspected discrimination played a part in her termination for "sleeping on the job," particularly since the boss had called her in for a lecture soon after her transition, telling her he was afraid her transition was going to cause problems for his business, and therefore she could not wear dresses to or from work and not to talk to other technicians about her "condition" unless they raised the issue first, and made some other negative comments. A number of other events occurred that seemed biased. She was fired about a month and a half after her chat with the boss. She complained to the EEOC the next day.

When she went to the EEOC, she was told that the EEOC did not take trans discrimination claims. She was turned away, leaving her with no recourse. About a year later, she heard about another trans woman in Georgia receiving protection of the law. She returned to the EEOC, but was turned away again. Four months later, she again heard about a similar case. She went back to the EEOC, which then agreed to take her claim. However, since her claim was being made outside of the 180 day time limit in Georgia, her claim was immediately dismissed.

Our firm became involved at this point. We moved the EEOC for reconsideration on the grounds of equitable tolling, which permits later filing when equity requires, such as being misled by government officials into not filing on time. The EEOC, to its credit, promptly agreed that her claim should be considered. Nonetheless, the EEOC decided that there was not enough evidence to find discrimination. We filed suit in the United States District Court for the Northern District of Georgia, along with local counsel Jerry L. Worthy, Jr.

Defendant Credit Nation moved to dismiss the case, on the grounds that Ms. Chavez had filed with the EEOC after the 180 day time limit, invalidating her claim. We were able to defeat the motion to dismiss on the grounds that Ms. Chavez had been diligent, the EEOC had been incorrect in turning her away, and the legal principle of equitable tolling applied. To its credit, the EEOC submitted an amicus brief acknowledging the error, and arguing that the claim should move forward despite the error. An amicus brief was also submitted by a consortium consisting of Freedom to Work, Gay and Lesbian Advocates and Defenders (GLAD), Lambda Legal, National Center for Transgender Equality, PFLAG National, Transgender Law Center (TLC), and Transgender Legal Defense & Education Fund (TLDEF), written and filed by Theresa Reneker, now at the firm of Renaker Hasselman, San Francisco, California, Jacob Richards, now at the firm of Keller Rohrback, Oakland, California, and Greg Nevins, of Lambda Legal.

After discovery and depositions, Defendant Credit Nation moved for summary judgment, reviving the issue of the lateness of the charge, and also raising the issue that Ms. Chavez had insufficient evidence for a reasonable jury to find discrimination. The second issue required Ms. Chavez to point the Court to evidence suggesting discrimination, and show

that there was enough for a reasonable jury to find discrimination. Ms. Chavez won on the first issue of equitable tolling, but lost on the second issue of sufficient evidence.

Ms. Chavez appealed her case to the United States Court of Appeals for the 11th Circuit. An amicus brief was submitted by Lambda Legal and Transgender Law Center, written by Beck Fineman of Ryan, Ryan and Deluca, Stamford, Connecticut.

The Court called for oral argument, which was heard on November 6, 2015. It is notable that the 11th Circuit, the busiest federal court in the nation, only calls for oral argument in about 10% of cases. While Ms. Chavez had raised several issues on appeal, the three-judge panel hearing the case was particularly interested in one issue: the legal standard for judging a "mixed motive" case.

There are three ways to prove sex discrimination under the federal Civil Rights Act: 1) direct evidence (the boss says "you're fired because of your sex"), 2) indirect evidence (e.g., the boss says you're fired for not wearing a safety vest, but others of different sex were not fired for that) and 3) mixed motive (you admit not wearing the safety vest, but there's evidence that sex discrimination was a motive also, such as the boss saying "let's find an excuse to get rid of the woman"). The appeals court was interested in the third method, the "mixed motive" case.

The lower court said that Ms. Chavez did not have enough evidence to show any discriminatory motivation. The lower court also said that no reasonable jury could find that anything other than sleeping was the reason for her firing. Because the case was dismissed before it was presented to a jury, all genuine issues of material fact are presumed in favor of the plaintiff on this appeal. This means that if the plaintiff and defendant disagree about a fact, the plaintiff's evidence is assumed to be correct. When and if the evidence is presented to a jury, that presumption no longer holds.

On appeal, Ms. Chavez argues that she has a lot of evidence of discrimination, and that a reasonable jury could find that discrimination was part of the reason she was fired. The defendant says that's not the law, and that she must show the reason for firing – sleeping on the job -- was a pretext for discrimination, also called the "McDonnell Douglas framework."

The question on this oral argument is whether, interpreting all facts favorably for the plaintiff, she produced enough evidence to show that the defendant had a mixed motive for terminating her employment, and should have been permitted to present her evidence to a jury. We contend that she has more than enough evidence, and we look forward to finding out whether the Court agrees.