

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

JESSE VROEGH,

Plaintiff,

v.

**IOWA DEPARTMENT OF
CORRECTIONS, IOWA
DEPARTMENT OF ADMINISTRATIVE
SERVICES, WELLMARK INC.,
d/b/a WELLMARK BLUE CROSS AND
BLUE SHIELD OF IOWA, and PATTI
WACHTENDORF, Individually and in her
Official Capacities,**

Defendants.

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Case No. LACL138797

**AMENDED
PETITION AT LAW
AND JURY DEMAND**

COMES NOW the Plaintiff, Jesse Vroegh, by and through his undersigned attorneys, and for his cause of action against the Iowa Department of Corrections, the Iowa Department of Administrative Services, Wellmark, Inc., d/b/a Blue Cross and Blue Shield of Iowa, and Patti Wachtendorf, individually and in her official capacities, states as follows:

PARTIES, VENUE & JURISDICTION

1. Plaintiff Jesse Vroegh was at all times material hereto a resident of Polk County, Iowa and is currently a resident of Marion County, Iowa.

2. Defendant Iowa Department of Corrections is a division of the State of Iowa with its principal administrative offices located in Des Moines, Polk County, Iowa.

3. Defendant Iowa Department of Administrative Services is a division of the State of Iowa with its principal administrative offices located in Des Moines, Polk County, Iowa.

4. Defendant Wellmark, Inc., d/b/a Wellmark Blue Cross and Blue Shield of Iowa, is an Iowa corporation with its principal place of business in Des Moines, Polk County, Iowa.

5. Upon information and belief, Defendant Patti Wachtendorf was at all times material hereto employed in Polk County, Iowa, and a supervisory or managerial employee of the Iowa Department of Corrections who personally participated in the unlawful employment actions at Mitchellville Women's Prison, as set forth herein. Upon information and belief, Defendant Wachtendorf is now employed in Lee County, Iowa, as the warden of Iowa State Penitentiary in Fort Madison, Iowa.

6. The amount in controversy exceeds the jurisdictional requirements of the Iowa District Court in and for Polk County.

CONDITIONS PRECEDENT

7. Within 300 days of the date of the last act of discrimination, Plaintiff filed charges of discrimination against Defendants with the Iowa Civil Rights Commission. Copies of said charges are attached hereto as Exhibits A, B and C, and their contents are incorporated as if fully set forth herein.

8. On May 31, 2017, the Iowa Civil Rights Commission issued Administrative Releases (letters of right-to-sue) to Plaintiff, copies of which are attached hereto as Exhibits D and E.

9. Plaintiff has complied with all conditions precedent to the filing of this cause of action.

FACTS COMMON TO ALL COUNTS

10. Plaintiff repleads the allegations set forth above as if fully set forth herein.

11. Plaintiff Jesse Vroegh (“Vroegh”) is a man. He is also transgender, having been assigned the female sex at birth, even though he has known since he was approximately seven years old that he is male.

12. In the third grade, Vroegh started using a traditionally male name.

13. Since 2000, Vroegh has presented as a male in the way he dresses and cuts his hair.

14. Vroegh was clinically diagnosed with gender dysphoria in approximately March 2014, and began undergoing medical treatment for that condition.

15. As part of his medically necessary treatment for gender dysphoria, Vroegh’s medical professionals advised him to socially transition to living full-time as a male in every aspect of his life.

16. In November 2014, Vroegh began hormone therapy as part of his transition to the male gender.

17. In early 2015, Vroegh began asking others to use male pronouns when speaking to or about him.

18. By mid-2015, Vroegh began using men’s restrooms in public places, and has used them consistently since.

19. Vroegh has legally changed his name and gender to reflect his male gender identity.

20. Vroegh identifies as male.

COUNT I
DISCRIMINATION IN USE OF FACILITIES
BASED ON GENDER IDENTITY AND SEX
Iowa Code Chapter 216 (2016)
(Vroegh v. Iowa Department of Corrections and Wachtendorf)

21. Plaintiff repleads the allegations set forth above as if fully set forth herein.

22. Vroegh began employment with Defendant as a Registered Nurse at the Correctional Institute for Women in Mitchellville, Iowa in 2009.

23. Defendant provides separate, single-sex restrooms and locker rooms for male and female employees to use.

24. In 2014, Vroegh notified Defendants that he would soon be moving forward with his social transition from female to male at work and asked that they consider establishing policies regarding transgender employees, including policies related to restroom and locker room use.

25. In October 2015, Vroegh asked his supervisor if he could begin using the male restrooms and locker rooms. His request was denied.

26. As of the fall of 2015, despite having been on notice of Vroegh's transition for over a year, Defendants had taken no steps to develop policies for transgender employees for equal access to single-sex spaces, such as restrooms and locker rooms, consistent with their gender identities.

27. Defendants were at that time, however, developing policies for the treatment of transgender inmates.

28. In November 2015, Vroegh again requested to use the male restrooms and locker rooms consistent with his gender identity and reiterated the need for Defendants to develop a policy for transgender employees.

29. Defendants again denied his request, citing a concern about the "rights of the male officers."

30. In April 2016, Defendants notified Vroegh that they had made the final decision not to develop a policy for transgender employees, and that he could not use the men's restrooms or locker rooms.

31. Defendants informed Vroegh that it had made these decisions because transgender issues were "too controversial."

32. As a result of Defendants' decision, Vroegh was continuously denied the use of restrooms and locker rooms consistent with his gender identity, because he is transgender.

33. In contrast, non-transgender employees were allowed to use restrooms and locker rooms consistent with their gender identity.

34. Defendants were Plaintiff's employer within the meaning of the Iowa Civil Rights Act, Iowa Code Chapter 216.

35. The Iowa Civil Rights Act, Iowa Code Chapter 216, prohibits discrimination based on gender identity and sex.

36. Discrimination on the basis of transgender status, gender transition, or gender nonconformity is discrimination on the basis of sex.

37. Defendants discriminated against Vroegh based on his gender identity and sex by denying him use of the restrooms and locker rooms that match his gender identity.

38. Defendants' conduct violated the Iowa Civil Rights Act, Iowa Code Chapter 216.

39. Vroegh was damaged because of Defendants' illegal actions.

COUNT II
DISCRIMINATION IN PROVISION AND ADMINISTRATION
OF BENEFITS ON THE BASIS OF SEX AND GENDER IDENTITY
Iowa Code Chapter 216 (2016)
(Vroegh v. Iowa Department of Corrections and Iowa Department of Administrative Services)

40. Plaintiff repleads the allegations set forth above as if fully set forth herein.

41. Defendant Iowa Department of Corrections provides employer-sponsored healthcare benefits to its employees.

42. Defendant Iowa Department of Corrections denied transgender employees the same level of health care benefit coverage that it provided to non-transgender employees.

43. Defendant Iowa Department of Administrative Services was involved in the decision to select and offer to employees of the Iowa Department of Corrections only employer-sponsored health care plans which discriminated against transgender employees.

44. Defendants denied Vroegh equal access to healthcare benefits based on his sex and gender identity in violation of the Iowa Civil Rights Act, Iowa Code Chapter 216.

45. The discriminatory health care benefits provided to Vroegh by Wellmark and the State of Iowa, through the Iowa Department of Corrections and the Iowa Department of Administrative Services, deprived Vroegh coverage for a medically necessary surgical procedure.

46. Vroegh was damaged by Defendant's illegal actions.

COUNT III
VIOLATION OF EQUAL PROTECTION PROVISIONS
OF THE IOWA CONSTITUTION BASED ON SEX
(Vroegh v. Iowa Department of Corrections, Iowa Department of Administrative Services,
and Wachtendorf)

47. Plaintiff repleads the allegations set forth above as if fully set forth herein.

48. Article I, section 6 and article I, section 1 of the Iowa Constitution prohibit the government from discriminating against individuals based on their sex.

49. Discrimination on the basis of transgender status, gender transition, or gender nonconformity is discrimination on the basis of sex.

50. Defendants engaged in impermissible sex-based discrimination by denying Vroegh the use of restrooms and locker rooms that match his gender identity and by denying him health care coverage for medically necessary surgery.

51. Discrimination on the basis of sex is a quasi-suspect class and demands a heightened level of scrutiny under the Iowa Constitution.

52. The Iowa Civil Rights Commission has published and makes available for all employers in the state a “*Sexual Orientation & Gender Identity Employment Brochure*,” available at <http://icrc.iowa.gov/sites/default/files/publications/2016/SOGIEmpl.pdf>. (hereinafter “ICRC Employer Guidance”). The Guidance specifically makes clear that the conduct engaged in by the employer in denying Vroegh equal access to sex-segregated facilities constitutes a violation of his rights under the ICRA:

“Does the new law require employers to eliminate gender-segregated restrooms? No. It is still legal in Iowa for employers to maintain gender-segregated restrooms. The new law does require, however, that employers permit employees to access those restrooms in accordance with their gender identity, rather than their assigned sex at birth.”

ICRC Employer Guidance.

53. The ICRC Employer Guidance further provides:

“Harassment based on sexual orientation and gender identity can include malicious conduct, sexual advances, and intentional misuse of gender specific pronouns.”

Id.

54. The ICRC Employer Guidance specifically requires equality in the provision of employment benefits without regard to gender identity, putting the employer, the State of Iowa, on ample notice that its employer sponsored health insurance plans violated the Iowa Civil Rights Act:

“Must an employer provide benefits to an LGBT employee? Benefits must be provided to employees without regard to their sexual orientation or gender identity. Benefits include such things as vacation time, insurance policies, holiday time, and other things that are provided to the employees by their employer. Benefits, such as insurance, must be provided to gay and lesbian employees to the same extent that the same benefits are provided to other employees in similar circumstances.”

Id.

55. Beyond the plain text and guidance of the ICRA itself, the State of Iowa and Wellmark had every reason to believe a ban on transition-related care constituted gender identity and sex discrimination, given clear additional guidance provided in the analogous federal context, where they knew that bans on transition-related care violate the non-discrimination clause of the Affordable Care Act. On May 18, 2016, the Office of Civil Rights of the U.S. Department of Health and Human Services issued a new final rule implementing section 1557 of the Affordable Care Act. *See 45 C.F.R. part 92, “Nondiscrimination in Health Programs and Activities,” 81 Fed. Reg. 31376, May 18, 2016.* (See Wellmark’s Response to ICRC complaint, September 12, 2016, page 2).

56. Indeed, in an apparent attempt to address that federal requirement of nondiscrimination in healthcare, through some process of information sharing or negotiation between Wellmark and the State of Iowa (and demonstrating the fact that collective bargaining was no impediment to efforts to comply with the ICRA), the Iowa Correctional Institute for Women ‘amended its plan, effective January 1, 2017, to provide benefit exception review for ‘transgender individuals, sex-specific preventative care services . . . that his or her attending provider has determined are medically appropriate.” (See Wellmark’s Response to ICRC Request for Information, April 24, 2017, page 5).

57. Moreover, as stated above, the only reason Iowa Department of Corrections and Wachtendorf gave for denying Vroegh equal access to single sex spaces, as required by the ICRA, was because transgender issues were “too controversial.”

58. Defendants acted in willful and wanton disregard of Vroegh’s rights.

59. Vroegh was damaged because of Defendants’ unconstitutional actions.

COUNT IV
VIOLATION OF EQUAL PROTECTION PROVISIONS
OF THE IOWA CONSTITUTION BASED ON TRANSGENDER STATUS
(Vroegh v. Iowa Department of Corrections, Iowa Department of Administrative Services,
and Wachtendorf)

60. Plaintiff repleads the allegations set forth above as if fully set forth herein.

61. Article I, section 6 and article I, section 1 of the Iowa Constitution prohibit the government from discriminating against individuals on the basis of transgender status.

62. Defendants engaged in impermissible discrimination on the basis of transgender status by denying Vroegh the use of restrooms and locker rooms that match his gender identity and by denying him health care coverage for medically necessary surgery.

63. Discrimination on the basis of transgender status is suspect and demands a heightened level of scrutiny under the Iowa Constitution. Defendants’ actions purposefully single out a minority group (transgender people) that historically have suffered discriminatory treatment and been relegated to a position of political powerlessness solely on the basis of stereotypes and myths regarding their transgender status—a characteristic that bears no relation to their ability to contribute to society and is immutable in that it is central to their core identity.

64. Defendants acted in willful and wanton disregard of Vroegh’s rights.

65. Vroegh was damaged because of Defendants’ unconstitutional actions.

RELIEF SOUGHT FOR COUNTS I - IV

**(Vroegh v. Iowa Department of Corrections, Iowa Department of Administrative Services,
and Wachtendorf)**

WHEREFORE the Plaintiff, Jesse Vroegh, respectfully prays that this Court enter judgment against the Defendants Iowa Department of Corrections, the Iowa Department of Administrative Services, and Patti Wachtendorf, individually and in her official capacities, and award damages, including damages for emotional distress, mental anguish, compensatory relief, punitive damages, reasonable attorney fees, and court costs, with interest as provided by law, and that the Court order the following specific equitable relief:

- A. Declare that the Defendants' conduct in denying Vroegh the right to use restrooms and locker facilities consistent with his gender identity, as complained about herein, is a violation of Iowa Code Chapter 216 and the Iowa Constitution;
- B. Award injunctive relief to effectively prevent future discrimination on the basis of gender identity or transgender status by directing that Defendants:
 - 1. Immediately develop and implement a policy specifically providing equal treatment to employees based on gender identity and allowing them to use all restrooms, locker rooms, and other facilities consistent with their gender identity;
 - 2. Conduct proper training on an annual basis that includes proper respect for the same treatment of transgender employees that is provided to non-transgender employees; and
 - 3. Offer only employer-sponsored health plans to its employees that do not discriminate based on sex, gender identity, and which provide equal coverage for all regardless of sex or transgender status.

4. Any other relief the Court deems just and proper under the circumstances.

COUNT V
DISCRIMINATION IN PROVISION AND ADMINISTRATION OF BENEFITS BASED
ON SEX AND GENDER IDENTITY
Iowa Code Chapter 216 (2016)
(Vroegh v. Wellmark, Inc.)

66. Plaintiff repleads the allegations set forth above as if fully set forth herein.

67. Defendant Wellmark, Inc. provides medical benefit plans to State of Iowa employees.

68. The medical benefit plans Wellmark, Inc. provides to State of Iowa employees do not provide coverage for transgender employees for medical treatment and procedures that it covers for non-transgender employees.

69. The medical benefit plans Wellmark, Inc. provides to State of Iowa employees discriminate against transgender members by excluding coverage for certain medical treatment and procedures based on the member's transgender status, gender identity, and sex.

70. Wellmark failed to propose to Defendant State of Iowa any medical benefit plans that did not discriminate against plan members based on their transgender status, gender identity, or sex.

71. The discriminatory health coverage provided by Wellmark and the State of Iowa to Vroegh deprived him coverage for a medically necessary surgical procedure.

72. As an agent of the employer, the State of Iowa, Wellmark is jointly and severally liable for illegal discrimination that has caused Vroegh damage.

WHEREFORE the Plaintiff, Jesse Vroegh, respectfully prays that this Court enter judgment against Defendant Wellmark, Inc. and award damages, including damages for

emotional distress, mental anguish, compensatory relief, reasonable attorney fees, and court costs, with interest as provided by law, and award the following specific equitable relief:

A. Declare that Wellmark, Inc.'s conduct as an agent of the employer, State of Iowa, in denying Vroegh medical plan benefits of the same type and coverage level as it provides to non-transgender members, as complained about herein, is a violation of Iowa Code Chapter 216 and the Iowa Constitution;

B. Award injunctive relief to effectively prevent future discrimination on the basis of gender identity or transgender status by directing that Defendant Wellmark, Inc. stop offering employer-sponsored medical plans which discriminate against members based on their sex, gender identity or transgender status, and amend its current plans to provide equal and nondiscriminatory coverage for transgender members.

C. Any other relief the Court deems just and equitable under the circumstances.

JURY DEMAND

73. Plaintiff hereby requests trial by jury in this matter.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on October 5, 2017.

By: U.S. Mail Facsimile
 Hand Delivered Overnight Courier
 Certified Mail X Other: EDMS, electronic service

Signature /s/Rita Bettis