

 [Click to Print](#) or Select 'Print' in your browser menu to print this document.

Page printed from: [The Recorder](#)

An Employee Spoke Out on Glassdoor.com, and Now the EEOC Is Suing His Company

Erin Mulvaney, The National Law Journal

May 25, 2017

Not long after Adrian Scott Duane posted a comment on Glassdoor.com that said his company's managers "do not know what the word 'discrimination' means, nor do they think it matters," the 32-year-old transgender worker's desk had been cleared and he was fired from a Silicon Valley-based education technology company.

The U.S. Equal Employment Opportunity Commission [on Wednesday filed suit](#) in California against IXL Learning Inc. on behalf of Duane claiming the company violated federal law and that the dismissal was retaliation for the comments Duane posted on Glassdoor, [the job recruiting website](#).

"While the platforms for employees to speak out against discrimination are evolving with technology, the laws against retaliation remain constant," said EEOC trial attorney Ami Sanghvi. "The main reason to litigate is to send a strong message that we will protect workers that engage in activities, not just through traditional avenues."

The case may serve as the latest example showing how companies and courts are grappling with protections for employees as technology platforms evolve.

"I would expect to see an uptick in these cases given the way workers communicate are changing," Sanghvi told The National Law Journal. "The way employees communicate internally and externally and the way people organize is changing. The platforms they are using to speak out change every day. But the law remains the same."

Duane filed [a civil lawsuit](#) in a California federal court against IXL earlier this year. [A judge's ruling on May 12](#) on procedural issues has kept the case pending. Previously, a San Francisco-based National Labor Relations Board judge [sided with the company in the case](#). The claims there, mirroring those in the EEOC's suit, were dismissed.

Jeff Wilson of Young Basile Hanlon & MacFarlane, who represents IXL, called the EEOC lawsuit, filed in the Northern District of California, "a disappointing overreach by a federal agency based upon disproven allegations."

The dispute began in 2014. Duane, who had worked for the company since 2013, had a conflict with his supervisor over the ability to work flexible hours after he returned from having a phalloplasty surgery, a female to male reassignment procedure, and claims he was discriminated against by his colleagues and management for his identity on multiple occasions.

Duane posted a comment on [Glassdoor.com in December 2014](#) after he said his supervisor refused to accommodate a scheduling request. Duane's anonymous review said in part: "If you're not a family-oriented white or Asian straight or mainstream gay person with 1.7 kids who really likes softball—then you're likely to find yourself on the outside ... Most management do not know what the word 'discrimination' means, nor do they seem to think it matters."

According to court documents, Paul Mishkin, the company's chief executive officer, confronted Duane with a print-out of the Glassdoor review during a meeting about his complaints about discrimination. Mishkin then terminated him, saying the post showed poor judgment and ethical values. Security had already cleared out his desk and personal effects.

The EEOC alleged IXL violated the Civil Rights Act of 1964 and the Americans with Disabilities Act, which say it is illegal for an employer to fire an employee for opposing discrimination, even when that activity is public. The EEOC's lawsuit seeks lost wages, compensatory and punitive damages and injunctive relief designed to prevent such discrimination in the future.

Mishkin said in a statement that it has already been determined that Duane did not experience discrimination at the company as a result of his gender identity. He said neither he nor Duane's managers were aware he was transgender and his identity was not a factor in his termination. He added that he was granted requests for time off or modified work schedules.

"I abhor the particularly overt and cruel marginalization that transgendered people face in society, and I strive, to the best of my ability, to ensure that IXL is a company that welcomes all individuals equally regardless of gender identity," Mishkin said.

The National Labor Relations Board previously took up Duane's claims. [Administrative Law Judge Gerald M. Etchingham](#) called Duane's post on Glassdoor.com "a tantrum" and "childish ridicule" of his employer. The judge said the claim of discrimination was unsupported and he did not believe the post was meant to be part of a concerted or group action among his fellow employees at the company.

"Here, Duane's posting on Glassdoor.com was not a social media posting like Facebook or Twitter," Etchingham wrote his decision. "Instead, Glassdoor.com is a website used by respondent and prospective employees as a key recruiting tool to recruit prospective employees."

Young Basile Hanlon & MacFarlane's website touts the NLRB win for IXL. The firm describes the labor agency's decision as "an important development in the NLRB's continued attempt to apply the act's concerned activity protections to employee use of social media and other online venues."

David Marek of the Marek Law Firm, who represents Duane, said his client was pleased the EEOC took up the case. "I'm guessing these cases will become more and more common," Marek said. "I would hope that employees are given protections on those platforms as they are given on other platforms."

Copyright [National Law Journal](#). All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.

Erin Mulvaney, based in Washington, covers labor and employment. Contact her at emulvaney@alm.com. On Twitter: [@erinmulvaney](#)

Copyright 2017. ALM Media Properties, LLC. All rights reserved.