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A monthly digest of news and information of interest to HR professionals.

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Food For Thought: The Dopamine Lollipop

By: Steve Willis, VitalSmarts VP and Master Trainer



I just finished a four day Crucial Conversations training and certification course back east. The facilities were great, the staff was greater, and the food . . . the food was the greatest of all! They had something for everyone. It was light, yet filling. What stood out most to me was the noticeable absence of the commonly accepted training staples: items with lots of sugar. While we didn't have any sweet, sweet chocolate, we also didn't suffer from huge sugar crashes in the afternoon. The snacks provided just the right amount of "pick-me-up" necessary to sustain the group's concentration and focus without the sharp spikes in blood sugar. Someone, behind-the-scenes, had apparently been doing their job.

The right kind of snack at the right time makes an impact. Yet, sometimes a trainer has little to no control over these types of arrangements. This realization started me thinking about snacks over which I do have control. Snacks that perk up a group and keep them going—especially in the afternoon when people are prone to sag. Here's what came to mind: instead of amping up your energy to frenetic levels or resorting to short-term, candy-fueled learning, try serving your participants what Brian Medina, author of *Brain Rules*, refers to as a dopamine lollipop.

"What's a dopamine lollipop?" you might ask. In essence, provide the group with a type of activity that allows them to experience the reward of retaining info while increasing the release of dopamine—the chemical in your body responsible for stimulation. This creates the natural condition that helps people focus, remain alert and attentive, and allows the brain to function at more optimal levels. Many training programs have these treats built into the instructional design, but you don't have to rely on that.

Here are a couple of ideas you can implement right away:

Make it a Game. See if the group can identify a pattern in a section summary. Have people pair up and take turns describing in their own words the essence of a principle or skill, each time having to use fewer words than their partner did.

Look for the Twist. Have table groups identify one-sentence reminders of why a certain skill is important. Or, try one of my favorites: at the end of a section, have pairs identify what the skill is, what it isn't, and what's trickiest about it.

So, next time you notice you've got a group in need of snack, throw them a dopamine lollipop and see what happens.

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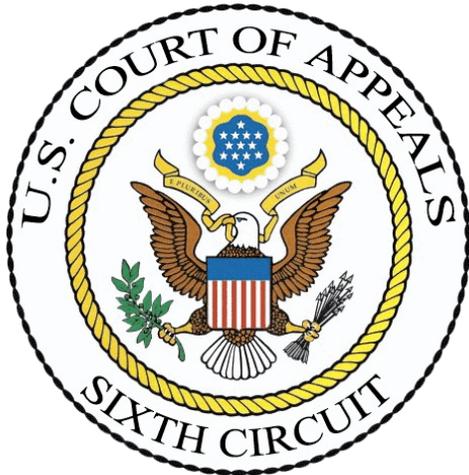
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New 6th Circuit Decision: Transgender and Transitioning Employees Are Protected from Sex Discrimination

By: Lisa E. Pizza, Spengler Nathanson P.L.L.

Legal matters involving transgender and transitioning individuals have been in the news in recent months for issues ranging from access to school bathrooms to enlistment in the military. Title VII is a federal law that forbids employment discrimination based on race, color, national origin, and religion and sex. The early decisions involving transgender employment discrimination claims simply determined that a claimant should be given the opportunity to offer evidence to prove that he or she was a victim of job discrimination based on sex. A recent decision from the federal appellate court with jurisdiction over Ohio, Michigan, Kentucky and Tennessee has resolved the claims of a transitioning employee who was fired, and rejected the employer's attempts to defend the firing.

By way of background, in 2004, the 6th Circuit Court of Appeals in *Smith v. City of Salem* allowed job discrimination claims to be litigated under Title VII. The appellate court referred back to the United States Supreme Court's 1989 decision in *Price Waterhouse v. Hopkins*, where a woman claimed she was denied a partnership because of her gender, and the Court said Title VII forbade discrimination "because of ... sex." Smith was a firefighter who claimed that his co-workers engaged in hostile conduct when he began "expressing a more feminine appearance," and that when the Chief learned Smith was beginning to transition to female, the Chief and other city officials allegedly concocted a plan to either fire Smith or force his resignation. The *Smith* Court observed: "Discrimination based on transsexualism is rooted in the insistence that sex (organs) and gender (social classification of a person as belonging to one sex or the other) coincide. This is the very essence of sex stereotyping." Smith was allowed to pursue Title VII sex discrimination claims for gender non-conforming conduct and sex-stereotyping.



In the years that followed, both the Equal Opportunity Employment Commission (EEOC) and another federal appellate court similarly issued decisions that allowed individuals to pursue claims that they had been denied hiring, denied assignments for work or been subjected to hostile work environments or retaliation because they were gender transitioning or subjected to gender stereotyping because they presented differently than their biological gender. Each of these cases simply allowed the complainants to proceed with litigating their claims. The decisions were based only on what the employee had alleged. None of those decisions

followed sworn testimony from both employer and employee witnesses. But, in March 2018, the 6th Circuit Court of Appeals decided a case in which a privately owned funeral home had fired an employee who was beginning the process of transitioning from male to female. Based on evidence from both the employer-owner and the employee, the Court in *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, (6th Cir. 2018), concluded that the funeral home had violated Title VII when it fired a gender-transitioning employee.

Stephens, a funeral director, informed the owner that she was transitioning from male to female and would begin dressing as a female at work. The funeral home had been providing its male, but not female, employees with clothing that complied with its dress code; it refused to provide Stephens a clothing allowance to dress as a female. The employer also claimed its religious beliefs would be unfairly burdened if it was required to employ Stephens while she dressed and presented herself as a woman; Stephens was fired. The owner, Rost, said God called him to minister to the grieving, he placed Bibles in public areas of the facility, and he believed the Bible teaches that "a person's sex is an immutable God-given gift," and paying for Stephens to dress as a female would make him complicit "in supporting the idea that sex is a changeable social construct." But, Rost also testified that he did not endorse his employees' faiths or non-job-related activities.

The Court concluded that Stephens was fired for failing to conform to gender stereotypes, in violation of Title VII. It rejected the home's argument that it did not single anyone out for disparate treatment because it required biological males to dress as men, just as it required biological female to dress as women. Citing its *Smith* decision, the Court said the issue was whether Stephens, as a transgender person "was being discriminated against based on 'his failure to conform to sex stereotypes concerning how a man should look and behave.'"

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