

Katten's Pro Bono Victory for Transgender Ironworker Mentioned in Law360 and Bloomberg BNA's *Daily Labor Report*

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Litigation and Dispute Resolution partner Robert T. Smith was quoted in a Law360 article about his pro bono client's victory in the US Court of Appeals for the Second Circuit. Bloomberg BNA's *Daily Labor Report* also wrote about the matter. The client is a transgender ironworker who sued his labor union for alleged sex discrimination and unlawful retaliation. The plaintiff claimed that Ironworkers Local 40 and its business agents discriminated against him by refusing to refer him for work through the union's hiring hall, and retaliated against him for filing an earlier action against the union. A New York district court found the plaintiff failed to exhaust his administrative remedies and dismissed his state- and city-law claims for lack of jurisdiction. In a precedential ruling, the Second Circuit vacated the lower court's dismissal, ruling that allegations of discrimination on the basis of transgender status are sufficient to state a claim against a labor union for breach of the union's duty of fair representation. The Second Circuit also cleared the way for the plaintiff to attempt to prove claims of transgender discrimination under Title VII of the Civil Rights Act of 1964 by reasoning that the failure to exhaust administrative remedies is not jurisdictional and inviting the district court to consider whether the plaintiff's failure to exhaust should have been excused.

Rob is very pleased with the court's decision, saying to Law360, "In addition to reinstating [the plaintiff's] case and remanding for further proceedings, the court recognized for the first time that allegations of discrimination on the basis of transgender status are sufficient to state a claim against a labor union for breach of the union's duty of fair representation, an implied cause of action under the National Labor Relations Act." He added, "Just as critically, the court paved the way for [the plaintiff] to attempt to prove his claims of transgender discrimination under Title VII of the Civil Rights Act of 1964, which would put the Second Circuit squarely in line with the increasing number of courts that have recognized that discrimination on the basis of transgender status is gender-based discrimination—pure and simple." ("[Second Circuit Revives Transgender Ironworker's Bias Suit](#),"

June 19, 2015; "[Court Revives Transgender Worker's Claims Versus Union Despite Lack of EEOC Charge](#)," June 22, 2015).

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