

Sixth Circuit Holds That Discrimination Based on Transgender Status is Considered Sex Discrimination Under Title VII

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The Sixth Circuit recently joined a growing number of federal courts to expand the definition of what constitutes sexual discrimination under Title VII. It found that discrimination based on an individual's transgender status is motivated by the individual's gender and stereotypical thoughts about gender identity and therefore considered sexual discrimination under Title VII.

The *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, No. 16-2424, decision centers on Aimee Stephens, a transgender woman who presented as a male when hired by the defendant-funeral home. The funeral home had a dress code that required men to wear suits and women to wear skirts. The company policy furthermore gave male employees a clothing allowance, but did not provide an allowance for female employees. In 2013, Stephens told her employer that she planned to transition from male to female and would dress as a woman while at work. Soon after this announcement, Stephens was fired because she "was no longer going to represent [herself] as a man" and the "public would [not] be accepting of [her] transition."

Stephens filed a claim with the EEOC, which brought suit against the funeral home for (1) unlawful discrimination under Title VII; and (2) administering a discriminatory clothing allowance policy. The funeral home argued that it was protected by a religious exemption under federal law because the owner of the funeral home, which was not affiliated with any church, had sincerely held religious beliefs.

The district court awarded summary judgment in favor of the funeral home, finding that enforcing Title VII would substantially burden the funeral home and its owner's ability to exercise his religious beliefs. The Sixth Circuit reversed the district court's findings and awarded summary judgment in favor of the EEOC. The Court had four primary holdings.

First, the funeral home violated Title VII because discrimination on the basis of transgender/transitioning status is inherently sex discrimination. The funeral home owner admitted that Stephens was terminated for expressing an intent

to dress like a female. The Court reasoned that discrimination based on failure to conform to stereotypical gender norms is analogous to discrimination based on gender and biology. Accordingly, an employer cannot discriminate, under Title VII, based on an employee's gender identity.

Second, the Sixth Circuit found that the funeral home was not protected by a religious exemption. The Religious Freedom Restoration Act ("RFRA") prohibits the government from substantially burdening an individual's exercise of religion unless the burden (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1. The funeral home argued that continuing to employ Stephens during her transition would distract grieving families and inhibit the funeral home's ability to carry out the religious exercise of serving these individuals. The Court disagreed, noting that the funeral home's belief that customers would be distracted by Stephens was premised on presumed biases. Therefore, a religious employer cannot discriminate or establish a substantial burden under RFRA based on presumed bias.

Third, the Court found that even if Title VII created a "substantial burden" under RFRA, this is still the least restrictive means of furthering the compelling government interest of eliminating workplace discrimination. Adopting a gender-neutral dress code, as suggested by the District Court, was not the least restrictive means because Stephens was terminated when she would no longer present as a man. As such, the funeral home's reason for termination was not limited to attire, but extended to Stephens' gender identity and behavior, which are protected under Title VII.

Finally, the Sixth Circuit allowed the EEOC to pursue its discriminatory clothing allowance claim. An EEOC charge of discrimination merely triggers an investigation; therefore, the EEOC may sue for matters beyond those stated in the original charge. In light of Stephens' accusations, the Court found that it was reasonable that the EEOC would investigate the funeral home's dress code and discover the allegedly discriminatory clothing allowance policy.

This decision is significant because it clarifies that discrimination based on gender identity or someone who is transitioning between genders is considered sexual discrimination under Title VII. Ultimately, this ruling further expands the meaning of "sex" under Title VII to include gender identity. Furthermore, an employer, even if it holds a sincere religious belief, cannot discriminate based on a presumed bias or use RFRA as a means to discriminate. Finally, the decision reinforces the longstanding belief that employers may not rely on "customer preference" when making potentially discriminatory hiring decisions.

If you have any questions concerning *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, or would like a copy of the Court's opinion or have any question with respect to employment issues, please contact a member of our Employment Practices Defense or Retail, Hospitality and Entertainment Facilities Practice Groups.

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