

Sixth Circuit Holds Discrimination Based on Transgender Status is Prohibited Under Title VII

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In a unanimous decision in *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, a three-judge Sixth Circuit panel has held that discrimination on the basis of transgender status is “necessarily” discrimination on the basis of sex and therefore prohibited under Title VII of the Civil Rights Act of 1964 (“Title VII”).

Background

The case involved Aimee Stephens, a transgender female and former funeral director at R.G. & G.R. Harris Funeral Homes (the “Funeral Home”). Stephens had worked at the Funeral Home since 2007, dressing and presenting as a male until 2013, when Stephens informed the owner, Thomas Rost, that she had struggled with her gender identity her entire life and had decided to begin the process of transitioning by presenting and dressing as a woman. Rost, who identifies as Christian, immediately terminated Stephens’s employment, later testifying that he fired Stephens because “he was no longer going to represent himself as a man” and “he wanted to dress as a woman.”

Stephens filed a charge with the Equal Employment Opportunity Commission (“EEOC”) alleging sex discrimination under Title VII. Following an investigation, the EEOC issued a letter of determination finding reasonable cause to believe that the Funeral Home “discharged [Stephens] due to her sex and gender identity, female, in violation of Title VII.” The EEOC subsequently filed a Title VII sex discrimination complaint against the Funeral Home in the Eastern District of Michigan.

On a motion to dismiss, the district court held that transgender status is not a protected trait under Title VII, and therefore the EEOC could not pursue a claim for alleged discrimination based solely on Stephens’s transgender and/or transitioning status. However, the district court found that the EEOC had adequately stated a claim for discrimination based on failure to conform to the Funeral Home’s “sex- or gender-based preferences, expectations, or stereotypes.” The parties subsequently cross-moved for summary judgment, with the Funeral Home arguing both that there was no cognizable sex discrimination claim, and also that the federal Religious Freedom Restoration Act (“RFRA”) precluded the EEOC from enforcing Title VII in this case, as doing so would substantially burden Rost’s exercise of religious beliefs. The district court determined that there was “direct evidence to

support a claim of employment discrimination” on the basis of sex in violation of Title VII, but nevertheless dismissed the suit, accepting the Funeral Home’s argument that RFRA applied and that the EEOC had failed to demonstrate that enforcing Title VII was the least restrictive way to achieve its interest of ensuring that Stephens is not subject to gender stereotypes in the workplace.

Sixth Circuit Decision

On appeal, the Sixth Circuit panel found that while the district court correctly found that Stephens was unlawfully fired because of her failure to conform to sex stereotypes, the court had erred in holding that Stephens could not alternatively pursue a claim under Title VII that she was discriminated against on the basis of her transgender and transitioning status.

The court found that, because Title VII protects against sex stereotyping and “transgender discrimination is based on the non-conformance of an individual’s gender identity and appearance with sex-based norms or expectations,” discrimination “because of an individual’s transgender status is always based on gender stereotypes: the stereotype that individuals will conform their appearance and behavior—whether their dress, the name they use, or other ways they present themselves—to the sex assigned them at birth.” Thus, the court concluded, “it is analytically impossible to fire an employee based on that employee’s status as a transgender person without being motivated, at least in part, by the employee’s sex.” Put another way, “an employer cannot discriminate on the basis of transgender status without imposing its stereotypical notions of how sexual organs and gender identity ought to align,” and thus “[t]here is no way to disaggregate discrimination on the basis of transgender status from discrimination on the basis of gender non-conformity[.]”

The Sixth Circuit also rejected the Funeral Home’s argument that RFRA precluded enforcement of Title VII in this case. RFRA prohibits the government from “substantially burden[ing] a person’s exercise of religion even if the burden results from a rule of general applicability,” unless the government “demonstrates that application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”

The court found that neither of the “burdens” alleged by the Funeral Home in connection with allowing Stephens to present as female—namely, that it “would often create distractions for the deceased’s loved ones” and would “forc[e] the Funeral Home to violate Rost’s faith,” which in turn would “significantly pressure Rost to leave the funeral industry and end his ministry to grieving people”—were “substantial” within the meaning of RFRA. As to the first argument, the court held that, “as a matter of law . . . a religious claimant cannot rely on customers’ presumed biases to establish a substantial burden under RFRA.” As to the second argument, the court found that “simply permitting Stephens to wear attire that reflects a conception of gender that is at odds with Rost’s religious beliefs” is not a substantial burden because “as a matter of law, tolerating Stephens’s understanding of her sex and gender identity is not tantamount to supporting it” and “the fact that Rost sincerely believes that he is being compelled to make such an endorsement does not make it so.” The court went on to find that, even if a substantial burden were in play, enforcing Title VII was the least restrictive means of furthering the compelling interest of preventing workplace discrimination, stating: “Where the government has developed a comprehensive scheme to effectuate its goal of eradicating discrimination based on sex, including sex stereotypes, it makes sense that the only way to achieve the scheme’s objectives is through its enforcement.”

This decision comes on the heels of two recent cases out of the [Seventh Circuit](#) and [Second Circuit](#),

both of which applied a similar analysis to conclude that discrimination on the basis of sexual orientation is prohibited sex discrimination under Title VII. We will continue to track new developments in this rapidly evolving area of the law. However, employers should bear in mind that many state and local laws already expressly prohibit discrimination on the basis of sexual orientation and/or gender identity and expression.

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