



Another Landmark Ruling: Court Says Transgender Discrimination Violates Federal Anti-Bias Law

THREE THINGS YOU NEED TO KNOW ABOUT THE 6TH CIRCUIT'S MONUMENTAL RULING

Insights

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In what appears to be the first time a federal appeals court has extended the nation's main federal employment discrimination statute to cover transgender and transitioning employees, the 6th Circuit Court of Appeals today ruled that employers cannot discriminate against such employees without violating Title VII. The appeals court also rejected the employer's attempt to claim that its religious beliefs should shield it from such discrimination claims, opening the door for other applicants, employees, and former employees to avail themselves of statutory anti-bias law.

Here are three things employers need to know about today's milestone ruling in *Stephens v. R.G. & G.R. Harris Funeral Homes, Inc.*

1. **A Federal Appeals Court Has Now Ruled That Title VII Covers Transgender And Transitioning Employees.**

The facts of the case are fairly straightforward. Aimee Stephens, a transgender woman who was born biologically male, began work as a funeral director for R.G. & G.R. Harris Funeral Homes in Detroit, Michigan in 2007. At the time, she presented as a man and used her then-legal name, William Stephens.

After six years of employment, Stephens presented the owner of the funeral home a letter indicating that she had struggled with a gender identity disorder her entire life. "I have felt imprisoned in my body that does not match my mind, and this has caused me great despair and loneliness," the letter said. "With the support of my loving wife, I have decided to become the person that my mind already is. ... Toward that end, I intend to have sex reassignment surgery. The first step I must take is to live and work full-time as a woman for one year. At the end of my vacation on August 26, 2013, I will return to work as my true self, Aimee Australia Stephens, in appropriate business attire."

The owner of the funeral home, Thomas Rost, fired Stephens in response to the letter. He indicated that he did not think things would "work out." He later justified his decision by saying he has a sincere belief that the Bible teaches that a person's sex is an immutable God-given gift, and that he would be violating God's commands if he were to permit his male-born funeral

director to wear women's clothes. He also said that he believed that his customers would be unnecessarily distracted and upset by the situation.

Stephens filed a Title VII gender discrimination claim against the funeral home alleging that she was discriminated against on account of her "sex," but the lower court dismissed Stephens's claim. It ruled that transgender status is not a protected trait under Title VII, and that the Religious Freedom Restoration Act (RFRA) barred the claim because of Rost's Christian beliefs. Stephens filed an appeal with the 6th Circuit Court of Appeals, which ruled today.

The appeals court—which hears federal cases arising from Ohio, Kentucky, Tennessee, and Michigan—overturned the lower court and ruled in Stephens's favor. "Discrimination on the basis of transgender and transitioning status is necessarily discrimination on the basis of sex," meaning that such adverse employment actions would violate Title VII. Although the funeral home tried to argue that, for the purposes of Title VII, "sex" refers to a "binary characteristic for which there are only two classifications, male and female," the court rejected this argument. "It is analytically impossible," the court said, "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." Moreover, the court said that discrimination against transgender persons necessarily implicates Title VII's proscriptions against sex stereotyping, which has long been held to be unlawful under the statute. "There is no way to disaggregate discrimination on the basis of transgender status from discrimination on the basis of gender non-conformity, and we see no reason to try," the court concluded. "Title VII protects transgender persons because of their transgender or transitioning status, because transgender or transitioning status constitutes an inherently gender non-conforming trait."

2. The Employer's Religious Beliefs Did Not Excuse The Discrimination.

The employer attempted to block the Title VII claim by raising a Religious Freedom Restoration Act (RFRA) defense. That statute protects employers if they can demonstrate that complying with a generally applicable law would substantially burden their religious exercise. But the court swept aside this defense, noting that the statute protects religious "exercise," not simply "religious beliefs."

The funeral home attempted to show that its activities were more akin to protected religious exercise given the nature of its business, noting that Rost feels compelled by his faith to serve grieving people. It pointed to two burdens that it believed would have been created had Stephens been allowed to return to work as a woman at the funeral home. First, it would have created distractions for the deceased's loved ones and hindered the healing process, and second, it could very well have pressured Rost to leave the funeral industry altogether by forcing him to violate his faith.

The court rejected the argument related to potential distractions on the part of the funeral home's customers. "A religious claimant cannot rely on customers' presumed biases to

establish a substantial burden under RFRA,” it said, noting that it would never permit the preferences and prejudices of customers to determine whether employment discrimination was valid. Moreover, the court noted, there was no evidence to suggest that a customer would have ever been distracted by Stephens had she presented herself as a woman at the funeral home.

The court then rejected Rost’s second argument. It noted that his religious beliefs in not wanting to support Stephens’s transgender status may very well have been honest convictions, but they did not justify discrimination. “As a matter of law,” the court said, “tolerating Stephens’s understanding of her sex and gender identity is not tantamount to supporting it.” It ruled that a party can sincerely believe that they are being coerced into engaging in conduct that violates his religious convictions without actually being so engaged. “Bare compliance with Title VII—without actually assisting or facilitating Stephens’s transition efforts—does not amount to an endorsement of Stephens’s views.”

3. **Employers Need To Continue To Evolve With The Times.**

This is the second ruling from a federal appeals court in the past 10 days to demonstrate the evolving nature of Title VII obligations. Just last week, the 2nd Circuit Court of Appeals became the second appellate court to hold that Title VII barred discrimination on the basis of sexual orientation. It’s a clear demonstration that employers’ attitudes about LGBT issues need to adapt to the times.

These decisions are likely to build upon each other and create a continuing momentum in other courts across the country. Indeed, in today’s decision, the 6th Circuit Court of Appeals cited to last year’s Hively v. Ivy Tech case (the first time a federal appeals court held that Title VII covered sexual orientation) in support of its ruling. You should not be surprised if courts in other jurisdictions take notice and begin to expand their own rulings when it comes to cases involving Title VII and perhaps even state antidiscrimination laws.

For employers directly covered by this 6th Circuit ruling—those in Ohio, Kentucky, Tennessee, and Michigan—you need to immediately take proactive steps to ensure transgender and transitioning status are treated the same as any other protected class. This includes reviewing your written policies, handbooks, training sessions, workplace investigations, hiring methods, discipline and discharge procedures, benefits offerings, and all other aspects of your human resources activities.

If you have any questions about this decision, or how it may affect your business, please contact your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific federal court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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