

Blog Post

Transgender Rights Trump Religious Rights in Sixth Circuit Case

March 26, 2018

Title VII's protections against sex discrimination extend to transgender workers, even in the face of a challenge based on the employer's religious rights, a federal appellate court has held. A funeral home violated Title VII when it terminated its funeral home director after she disclosed that she planned to transition from male to female and thus wanted to dress in women's clothing while at work, the Sixth Circuit Court of Appeals ruled in *Stephens v. R.G. & G.R. Harris Funeral Homes, Inc.*

The funeral home owner, a devout Christian, argued the federal Religious Freedom Restoration Act ("RFRA"), which prohibits the government from substantially burdening an individual's religious practice, protected him from Title VII liability. The Sixth Circuit Court of Appeals rejected that argument, essentially holding that the owner of the funeral home could not use his religious beliefs as a reason to engage in sex discrimination.

The *Stephens* case was initiated by the Equal Employment Opportunity Commission in Michigan in September of 2014. The EEOC argued that the funeral home violated Title VII when it terminated Ms. Stephens because of her intent to transition from male to female and her desire to wear women's clothes at work. The owner of the funeral home admitted he terminated Ms. Stephens for those reasons, but argued he made the decision because it

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went against his religious beliefs to employ Ms. Stephens if she dressed and acted like a woman. He claimed that he considered his work to be a form of religious service for grieving families, and that employing a transgender woman would hinder their healing process.

As a threshold matter, the Court held that Title VII prohibits employment discrimination on the basis of transgender status for two reasons: first, because Title VII prohibits subjecting employees to adverse employment actions based on their failure to conform to gender norms; and second, because discrimination due to transgender status is a type of sex discrimination. With respect to the second reason, which the lower court had rejected, the Court noted “[i]t 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.”

The Court then addressed the funeral home’s argument that the RFRA precluded imposing liability on the employer under Title VII. The RFRA prevents the government from enforcing a “religiously neutral law” that imposes a “substantial burden” on “religious exercise,” unless it is “in furtherance of a compelling government interest” and “the least restrictive means of furthering” that interest. On this point, the owner of the funeral home argued Ms. Stephens would distract his customers and, somehow, force him to stop working in the industry given the alleged infringement upon his religious beliefs. Neither of these reasons qualified as a “substantial burden” under the RFRA, according to the Court. Furthermore, the Court held that the funeral home owner could not “rely on customers’ presumed biases” to avoid liability under Title VII. The Court said that allowing Ms. Stephens to remain employed would not have substantially burdened the owner’s religious practice because there is a difference between “tolerating [Ms.] Stephens’ understanding of her sex and gender identity” and supporting it.

The *Stephens* case follows another recent federal appellate court ruling in *Zarda v. Altitude Express, Inc.* (2d Cir. 2018) expressly extending Title VII's protections to include sexual orientation discrimination. These two cases may signal a trend in courts adopting the EEOC's expanded interpretation of the scope of Title VII, at least until the U.S. Supreme Court says otherwise.

In the meantime, employers with operations in the Second Circuit (covering New York, Connecticut, and Vermont) and the Sixth Circuit (covering Ohio, Kentucky, Tennessee and Michigan) should take steps to ensure that workers are not discriminated against on the basis of sexual orientation or transgender status by, for example, updating their policies and training their supervisors.

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