

Sixth Circuit Holds Transgender Status Protected Under Title VII

March 12, 2018 | [EEOC](#), [Employment Discrimination](#), [Employment Lessons](#), [Workplace Culture And Conduct](#), [Labor And Employment](#)

On March 7, the U.S. Court of Appeals for the Sixth Circuit weighed in on the continuing debate surrounding the scope of Title VII's prohibition on sex discrimination. In a landmark decision, the court ruled that Title VII prohibits discrimination on the basis of transgender and transitioning status and further held that bare compliance with Title VII presents no substantial burden upon an employer's sincerely held religious beliefs, precluding a defense under the Religious Freedom Restoration Act ("RFRA"). In *EEOC v. R.G. & G.R. Harris Funeral Homes*, Aimee Stephens (formerly known as Anthony Stephens) was born biologically male and worked as a funeral director. Stephens was terminated shortly after she informed her employer that she intended to transition from male to female and would represent herself and dress as a woman at work. The employer argued that Title VII does not prohibit discrimination based on a person's transgender or transitioning status and that requiring the employer to employ Stephens while she dresses and represents herself as a woman would constitute an unjustified substantial burden upon the employer's sincerely held religious beliefs, in violation of RFRA. The Sixth Circuit held that discrimination on the basis of transgender and transitioning status violates Title VII. The court reasoned that it is analytically impossible to terminate an employee based on an employee's status as a transgender person, without being motivated, at least in part, by the employee's sex. Accordingly, the court declared: "Discrimination on the basis of transgender and transitioning status is necessarily discrimination on the basis of sex." The court further held that the employer's RFRA defense failed. In so holding, the court declared that an employer cannot rely on customers' presumed biases to establish a substantial burden under RFRA. The court further reasoned that no substantial burden exists in simply permitting an employee to wear attire that reflects a conception of gender that is at odds with the employer's beliefs. It is unclear whether the Sixth Circuit's holding will propel the Supreme Court to clarify the rights of LGBT workers under Title VII. What is clear is that, within the Sixth Circuit, discrimination against transgender individuals is prohibited under Title VII. Further, employers cannot rely on RFRA as a shield from liability.

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