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TRANSGENDER EMPLOYEE'S EEOC CLAIM AGAINST RELIGIOUS EMPLOYER DISMISSED UNDER RELIGIOUS FREEDOM RESTORATION ACT

On August 18, 2016, Judge Sean F. Cox in the U.S. District Court for the Eastern District of Michigan ruled that a funeral home business did not violate the law when it terminated a transgender employee who wished to dress as a woman. This decision is significant because it is one of the first cases the Equal Employment Opportunity Commission ("EEOC") has brought aimed at protecting transgender people in the workplace. The case is [**EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.**](#)

BACKGROUND

The plaintiff served as a funeral director/embalmer for the funeral home for nearly six years under the legal name Anthony Stephens. In 2013, Stephens provided his employer with a letter that stated that he was transgender and planned to transition from a man to a woman. As a result of his transition, Stephens would start dressing in appropriate women's business attire while at work. Shortly after receiving this information, the funeral home terminated Stephens because Stephens refused to comply with the funeral home dress code. Under the dress code, men were required to wear a pants suit and neck tie, while women were required to wear a skirt suit.

As a result of the termination, Stephens filed a charge of discrimination with the EEOC claiming that she was discharged due to her sex and gender identity, in violation of Title VII Civil Rights Act of 1964 ("Title VII"). After conducting its investigation, the EEOC filed a civil action against the funeral home.

ANALYSIS

The EEOC alleged that the funeral home violated Title VII by firing Stephens because Stephens did not conform to the funeral home's sex/gender-based stereotypes as to work clothing. It is well established in the 6th Circuit that sex-stereotyping occurs when an employer discriminates against a man or woman because they do not wear what a man or woman would ordinarily wear. Courts view such conduct as sex discrimination because the discrimination would not occur but for the employee's sex. In response to the EEOC's sex-stereotyping claim, the funeral home argued that the Religious Freedom Restoration Act of 1993 ("RFRA") prohibits the EEOC from applying Title VII to force the funeral home to violate its sincerely held religious beliefs.

The court ultimately agreed with the funeral home. Evidence was presented that the funeral home's owner had been a Christian for more than 65 years and was involved in church matters, and the funeral home expressed its mission statement in religious terms on its website.

The court found that the funeral home established that enforcement of Title VII, and the body of sex-stereotyping case law that has developed under it, would impose a substantial burden on the funeral home's ability to conduct business in accordance with its sincerely held religious beliefs. The court found that the EEOC failed to show that enforcement of the religious burden on the funeral home is the least restrictive means of protecting employees from gender stereotyping. While the EEOC claimed that the funeral home fired Stephens for failing to conform to the masculine gender stereotypes expected as work clothing, the court reasoned that the EEOC did not sufficiently challenge the funeral home's sex-specific dress code. Since the EEOC did not propose a reasonable accommodation that would be a less restrictive means of eliminating gender stereotypes, such as a gender-neutral dress code, the court found in favor of the funeral home.

PRACTICAL TAKEAWAYS

This decision is significant for its place as one of the first EEOC claims for transgender discrimination and tends to confirm that courts will analyze transgender discrimination claims under Title VII as claims for sex discrimination. It also does not foreclose successful claims based on transgender discrimination. The 2014 U.S. Supreme Court decision *Burwell v. Hobby Lobby Stores, Inc.* made clear that the 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" absent a showing by the government 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."

In writing the opinion for the Supreme Court in *Hobby Lobby*, Justice Samuel Alito had noted that an employer could not cloak discrimination on the basis of race (by way of example) as a religious practice to "escape legal sanction." Judge Cox did not dispute that in his opinion but

found that the EEOC failed to meet its burdens under the RFRA.

If you have questions regarding this decision, please contact Jon Rabin at (248) 457-7835 or jrabin@hallrender.com or your regular Hall Render attorney. Jon thanks summer law clerk Matthew Paradiso for preparing the first draft of this post.