

# Transgender and gender transitioning status under Title VII

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## [Case overview](#) [Comment](#)

The US Court of Appeals for the Sixth Circuit has held that a funeral home violated Title VII of the Civil Rights Act 1964 when it fired a director because she was planning to undergo sex reassignment surgery and had requested to dress in women's clothing at work.<sup>(1)</sup>

### Case overview

The funeral home argued that the director's transgender status was not protected under Title VII, but the Sixth Circuit held that the termination "fell squarely within the ambit of sex-based discrimination" because "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". The court also rejected the funeral home's argument that requiring it to employ the director while she presented herself as a woman would be an unjustified substantial burden on its sincerely held religious beliefs in violation of the Religious Freedom Restoration Act. The court opined that even if the funeral home had demonstrated a substantial burden, the termination would still have been unlawful because enforcing Title VII in this way is the least restrictive means of furthering the government's compelling interest in eradicating workplace discrimination based on sex.

### Comment

Employers – particularly those in the Sixth Circuit (Michigan, Ohio, Kentucky and Tennessee) – should consider reviewing their employment policies and hiring practices to ensure that they are treating transgender status as a protected category. While the Sixth Circuit is the first federal appellate court to expressly hold that discrimination based on transgender and gender transitioning status violates Title VII, the Second and Seventh Circuits have recently issued decisions expanding Title VII's protections beyond traditional gender concepts to include sexual orientation.

Employers should also exercise caution when considering whether to base a negative employment decision on the exercise of a sincerely held religious belief under the Religious Freedom Restoration Act. As the Sixth Circuit's holding demonstrates, the courts are likely to closely scrutinise or reject any such defence.

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### Endnotes

(1) *EEOC v RG & GR Harris Funeral Homes Inc*, 16-2424.

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