

# THE NATIONAL LAW REVIEW

## EEOC Sues Detroit Funeral Home Chain for Sex Discrimination Against Transgender Employee

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### ***Lawsuit Is One of Two the Agency Filed Today - the First Suits in Its History - Challenging Transgender Discrimination Under 1964 Civil Rights Act***

DETROIT- Detroit-based R.G. & G.R. Harris Funeral Homes, Inc. **discriminated based on sex** in violation of federal law by firing a Garden City, Mich., funeral director/embalmer **because she is transgender**, because she was transitioning from male to female, and/or because she did not conform to the employer's gender-based expectations, preferences, or stereotypes, the U.S. Equal Employment Opportunity Commission (EEOC) alleged in a lawsuit filed today. This is one of the first two lawsuits ever filed by the agency alleging sex discrimination against transgender individuals. The other case, *EEOC v. Lakeland Eye Clinic*, was filed today by the EEOC's Miami District office.

Harris is a funeral home operator with locations in Detroit, Livonia and Garden City. Amiee Stephens had been employed by Harris as a Funeral Director/Embalmer since October 2007 and had always adequately performed the duties of that position. In 2013, she gave Harris a letter explaining she was undergoing a gender transition from male to female, and would soon start to present (e.g., dress) in appropriate business attire at work, consistent with her gender identity as a woman. Two weeks later, Harris's owner fired Stephens, telling her that what she was "proposing to do" was unacceptable.

Such alleged behavior violates Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination, including that based on gender stereotyping.. The EEOC filed suit in the U.S. District Court for the Eastern District of Michigan (Case No. 2:14-cv-13710) after first trying to reach a pre-litigation settlement through its conciliation process. The suit seeks both monetary and injunctive relief.

The lawsuits announced today are part of the EEOC's ongoing efforts to implement its Strategic Enforcement Plan (SEP). The Commission adopted this SEP in December of 2012. The SEP includes "coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply" as a top Commission enforcement priority.

In 2012, in *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (April 20, 2012), the Commission ruled that employment discrimination against employees because they are transgender, because of their gender identity, and/or because they have transitioned (or intend to transition) is discrimination because of sex, and thus violates Title VII. This appeal arose from federal sector enforcement, where the same laws apply, but the EEOC has appellate adjudicatory authority.

In *Macy*, the Commission relied on reasoning from well-established Supreme Court precedent, as well as on holdings from more recent lower court decisions, including *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011),



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and *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004). The Commission and these courts recognize that when an employer considers an employee's sex in taking an adverse action - for example, if an employer fires a transgender employee because the employee does not conform to the employer's expectations or stereotypes regarding how someone "born" that sex should live or look - the employer will violate Title VII. The lawsuits filed today are consistent with the Commission's position in *Macy* and binding court precedent.

EEOC Indianapolis Regional Attorney Laurie Young, whose jurisdiction includes Michigan, said, "Title VII prohibits employers from firing employees because they do not behave according to the employer's stereotypes of how men and women should act, and this includes employees who present themselves according to their gender identity."

The EEOC today also announced that it had filed suit against Lakeland Eye Clinic, a Lakeland, Florida-based organization of health care professionals, for violating Title VII by firing an employee because she is transgender and did not conform to the employer's gender-based expectations, preferences, or stereotypes. According to the allegations in that lawsuit, Lakeland's employee had performed her duties satisfactorily throughout her employment; however, after she informed them she was transgender and intended to start presenting as a woman, Lakeland discharged her. That lawsuit, *EEOC v. Lakeland Eye Clinic*, was filed in the U.S. District Court for the Middle District of Florida (Tampa Division) (Case No. 8:14-cv-2421).

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