# Controversial Transgender Pronoun Debate at Work: Navigating Murky Legal Terrain

Michigan is seeking reinstatement at a hospital after being allegedly fired for requesting a religious accommodation that would allow her to avoid using gender-affirming pronouns or referring patients for transgender surgical procedures and drugs. In a similar case, a Michigan federal court ruled in February that a Grifols SA subsidiary, Interstate Blood Bank Inc., must face claims that it unlawfully fired a worker who refused to use a transgender co-worker's preferred pronoun.

The recent decision by the US Court of Appeals for the Seventh Circuit to dismiss a Christian teacher's lawsuit against a school district's transgender name-and-pronoun-use policy has added another layer of uncertainty for employers trying to balance the rights of LGBTQ workers with religious freedom claims. The case involved John Kluge, who sued his school district for rescinding a religious accommodation that had allowed him to refer to all students by their last names to avoid "affirming transgenderism." Kluge's lawsuit was dismissed, with the court upholding the school district's policy of using transgender students' preferred names and pronouns, which it said was necessary to avoid creating a hostile environment for transgender students.

One key takeaway for employers dealing with competing interests is that the school district, in Kluge's case, documented its engagement with Kluge throughout the accommodation process. The documentation was key to successfully defending the accommodation denial, according to Michelle E. Phillips of Jackson Lewis PC.

Whether misgendering or declining to use someone's preferred name in the workplace violates, federal civil rights law or whether private businesses could claim a religious exemption from bias claims by LGBTQ workers has yet to be addressed by the courts. While the US Supreme Court's 2020 ruling in Bostock v. Clayton County granted federal employment protections to LGBTQ workers, it did not address these issues. The case held that LGBTQ employees are protected from discrimination under Title VII of the Civil Rights Act of 1964.



However, the US Equal Employment Opportunity Commission issued guidance in 2021 stating that intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to a hostile work environment claim violating Title VII. A federal judge has blocked the guidance. The issue is primed for further Supreme Court review, especially with the justices set to reconsider the 1977 Trans World Airlines Inc. v. Hardison decision, which established the de minimis burden standard for denying Title VII religious accommodation requests.

Mark S. Goldstein, a partner at Reed Smith LLP, said that until the high court intervenes, "employers should anticipate getting more and more requests from employees objecting to business policies and practices on religious grounds." Goldstein added that "employers will have to grapple with providing accommodations that could potentially be discriminatory or perceived as discriminatory and risk litigation." He said employers would have to evaluate these requests on a case-by-case basis, requiring an individualized assessment.

Amy Epstein Gluck, a partner at FisherBroyles LLP, said that the issue of religious-based claims against companies' transgender worker policies is "really ripe for the Supreme Court to rule on." However, Epstein Gluck said that the Seventh Circuit might have reached the same conclusion in Kluge's case even under a stricter standard, as the court gave many specific reasons why accommodating Kluge would create an undue hardship on the employer, including harm to the students.

Overall, the issue of balancing religious freedom claims with the rights of LGBTQ workers is a complex one that will likely continue to evolve in the courts.

Employers must navigate these issues carefully and document their engagement with employees throughout the accommodation process to successfully defend their policies and practices. With the upcoming Supreme Court review of the Hardison decision, it remains to be seen whether a stricter standard for denying Title VII religious accommodation requests will be established.