

## Restroom Accommodation for Transgender Employees (and Patrons)



Over the past year, the rights of transgender persons have become a focus on both the national and statewide level; and, in recent months, restroom use by transgender persons seems to be one of the main areas of focus.

Following the passage of the infamous North Carolina Bathroom Bill<sup>1</sup> (Senate Bill 2 – which required all public employers in North Carolina to designate multiple-occupancy bathrooms and changing facilities for use by people based on their “biological sex”), some states passed laws that address transgender rights and, in some cases, transgender individuals’ “restroom” rights.

### For example:

- Massachusetts Senate Bill 735<sup>2</sup>, which went into effect on October 1, 2016, requires all Massachusetts employers to allow both transgender employees and patrons to use the restroom of their choosing.
- California AB-1732<sup>3</sup>, which went into effect on March 1, 2017, requires that all single-user toilet facilities in any business establishment, place of public accommodation, or state or local government agency be identified (with appropriate signage) as all-gender toilet facilities.
- Pennsylvania Executive Order: 2016-04<sup>4</sup> bans discrimination against employees or job applicants based on gender expression or identity.
- New York State Division of Human Rights’ regulations<sup>5</sup> extend the protections of the New York State Human Rights Law to gender identity and transgender individuals.

In addition to the above-listed laws, several federal agencies have also weighed in on transgender rights over the past couple of years for example:

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<sup>1</sup>See our article [“Does North Carolina’s New Public Facilities Law Impact Private Employers?”](#) for more information regarding this law.

<sup>2</sup>See our article [“Massachusetts’ Transgender Restroom Law Now in Effect”](#) for more information regarding this law.

<sup>3</sup>See our article [“Coming Soon to California – Unisex Single Stall Restrooms in Places of Public Accommodation”](#) for more information regarding this law.

<sup>4</sup>See our article [“The Boss Is Not Alone, Pennsylvania Governor Also Responds To Recent North Carolina And Mississippi Laws”](#) for more information regarding this executive order.

<sup>5</sup>See our article [“New Regulations Provide Protections for Transgender Employees in New York”](#) for more information regarding these regulations.

- In August of 2014, the US Department of Labor published new guidance materials<sup>6</sup> wherein it stated that discrimination based upon gender identity and transgender status were violations of Title VII of the Civil Rights Act and Executive Order 11246 (which prohibits employment discrimination by federal contractors).
- In June of 2015, the Occupational Safety and Health Administration (OSHA) published guidelines<sup>7</sup> on restroom access for transgender employees – stating that all employees should be permitted to use the facilities that correspond with their gender identity.
- In May of 2016, the Equal Employment Opportunity Commission (EEOC) published new guidance materials<sup>8</sup> wherein it stated that employers cannot require employees to prove their gender in order to use the restroom of their choice or that they use a single-user facility.

In light of the continued focus on transgender rights, employers should take action to verify that their practices take transgender concerns into account for example:

- Review your company's EEO, nondiscrimination and anti-harassment policies, and make sure these policies specifically address gender identity.
- Review policies that are likely to address gender, such as appearance and dress code policies. Remove the gender-specific requirements where possible.
- Verify that your nondiscrimination and anti-harassment training materials address gender identity and expression policies in the workplace and emphasize the company's policy regarding inappropriate behavior.
- Review your benefit plans and verify that employees are not denied benefits on the basis of gender identity or expression.

In addition, employers should be prepared to accommodate certain requests made by a transgender employee. Accommodations typically include:

- Calling a transgender employee by the name he/she prefers.
- Allowing a transgender employee's nametag to reflect the preferred name.
- Allowing a transgender employee to modify his/her appearance in alignment with the gender with which he/she identifies.
- Allowing a transgender employee to use the restroom of his/her choice.

Employers should consider being prepared to respond to questions, concerns and requests regarding transgender employees. If you have any questions regarding how to best handle these issues, please contact an HR Professional.

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<sup>6</sup>See our article "[Gender Identity and Transgender Status Protected Under Title VII](#)" for more information regarding these guidance materials.

<sup>7</sup>See our article "[OSHA Releases New Guidelines for Transgender Restrooms](#)" for more information regarding these guidelines.

<sup>8</sup>See our article "[EEOC Weighs in on Transgender Bathrooms](#)" for more information regarding these guidance materials.