

Transgender at Work: Bathrooms & Beyond!

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Introduction: Starting July 1, 2017, California employers will be required to comply with a new set of State regulations governing the hiring and employment of transgender individuals, pursuant to the Fair Employment & Housing Act (“FEHA”).

What is Transgender? “Transgender” is independent of sexual orientation and describes individuals whose gender identity (what they feel inside) and/or gender expression (their dress, behavior, etc.) is different from their gender assigned at birth. Many transgender people transition to live their lives consistent with their gender identity.

Legal Protections in Employment: The FEHA makes it unlawful for employers to discriminate or harass any person due to their being in a protected class, including gender (i.e., gender identity or gender expression) and transgender status. Reasonable standards for employee attire and appearance may be imposed, so long as “an employer shall allow an employee to appear or dress consistently with the employee’s gender identity or gender expression.” The new regulations make it unlawful to inquire about an applicant or employee’s transgender status. Employers must also abide by an employee’s request to be identified with a preferred gender, name, and/or pronoun. It also shall not be considered a misrepresentation or fraud for an applicant to use a name on an application form that is inconsistent with the applicant’s assigned sex at birth.

Bathrooms: As of March 1, 2017, all “single-user” bathrooms must be available to all users on a gender-neutral basis. Such bathrooms must have appropriate signage indicating that its availability is regardless of gender. Such signs are readily obtainable on-line.

Other Facilities: The July 1, 2017 rules go far beyond restrooms. Specifically, all employees also have a right to safe and appropriate dressing room and locker room facilities and use the ones that correspond to the employee’s gender identity. Where possible, an employer should provide an easily accessible unisex single stall bathroom for use by any employee who desires increased privacy. This includes use by an employee who does not want to share a restroom with a transgender coworker. However, use of a unisex single stall restroom should always be a matter of choice. No individual employee should be forced to use a unisex single stall as a matter of policy or due to harassment.

Penalties: Violations of the FEHA can be very expensive. A plaintiff can be awarded lost wages, emotional distress, punitive damages and attorney’s fees. Even if an employer wins, these cases can be expensive to defend.

Prevention: Carefully-drafted policies and basic training for supervisors will greatly reduce the risk of violating the FEHA. LightGabler regularly provides such services, and is available to assist with any situation that may arise.

