

## Chicago Council Passes Gender Identity Protections in Accordance with EEOC Guidelines

JULY 5, 2016

On June 22, 2016, the Chicago City Council approved an amendment to the city's Human Rights Ordinance prohibiting public accommodations from requiring patrons to show a government-issued ID upon request to access facilities that are private in nature. The Chicago amendment is in accordance with the recently released Equal Employment Opportunity Commission (EEOC) fact sheet advising employers on prohibited conduct concerning transgender discrimination. The amendment also follows a wave of state legislation concerning LGBT discrimination, which came in the wake of North Carolina's so-called "bathroom bill." A summary of recent developments in this area – including the Chicago Ordinance, the EEOC fact sheet, and recent state legislation – follows below.

### Chicago Human Rights Ordinance

The [amendment to Chicago's Human Rights Ordinance Section 2-160-070](#) is now effective. It provides that "any person may use a public accommodation or any of its products, facilities, or services that are open to persons of his or her sex. For purposes of this subsection, 'sex' includes both biological category and gender identity. Each person determines his or her own gender identity; no proof shall be required except his or her expression of his or her gender." This includes the bathrooms of hotels, restaurants, and grocery stores, along with public facilities.

### EEOC Fact Sheet – Access for Transgender Employees

On May 3, 2016, the EEOC issued "Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII of the Civil Rights Act of 1964," clarifying its position that denying equal access to a bathroom corresponding to an individual's gender identity is considered sex discrimination under Title VII. The U.S. Department of Justice expressed support for the EEOC's guidance one day later.

The EEOC's fact sheet reiterates EEOC decisions relating to gender identity and provides guidance on prohibited workplace conduct. These guidelines apply to state and local government employees and private employers with 15 or more employees. Employers should ensure policies and procedures comply with the following EEOC directives:

- Transgender means “people whose gender identity and/or expression is different from the sex assigned to them at birth.”
- A person does not need to undergo any medical procedure to be considered a transgender man or woman.
- Denying an employee equal access to a common restroom corresponding to the employee’s gender identity constitutes sex discrimination.
- An employer cannot avoid the requirement to provide equal access to common restrooms by restricting transgender employees to a single-user restroom.
- Contrary state law is not a defense under Title VII.

In addition, the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) guidance on avoiding Title VII violations for LGBT discrimination can be found at [“A Guide to Restroom Access for Transgender Workers.”](#)

## State Legislation Regarding LGBT Discrimination

The EEOC and DOJ’s statements in May were spurred partially in response to North Carolina’s [House Bill 2](#), known as the Public Facilities Privacy and Security Act, enacted in March 2016, which requires that all public schools and buildings with multiple-occupancy bathrooms and changing facilities be designated for use only by people based on their “biological sex” as stated on their birth certificates. The bill also provides that state law overrides all local ordinances concerning employment and public accommodations, thereby prohibiting municipalities from extending legal protections to LGBT employees.

On July 1, 2016, a federal court struck down similar Mississippi legislation, [House Bill 1523](#), known as the Religious Liberty Accommodations Act, which would have shielded private businesses and certain public-sector employees from legal action and discipline if they refused to serve a customer on the grounds of a “sincerely held religious belief.” The court ruled that the Act was “state-sanctioned discrimination” that “violates both the guarantee of religious neutrality and the promise of equal protection of the laws.”

As of May 2016, 19 states and the District of Columbia have enacted some form of legislation providing discrimination protections based on gender identity or expression. Since North Carolina’s H.B. 2 was enacted, several states have taken action to either strike down LGBT discrimination legislation or enact LGBT protective legislation. (See our client briefing, [Maryland Bans Gender Identity Discrimination in Employment](#)). In April, Louisiana Governor John Edwards and Pennsylvania Governor Tom Wolf both signed executive orders protecting against gender identity discrimination in public employment positions.

Moreover, on February 17, 2016, the California Department of Fair Employment (DFEH) issued an [“FAQ for Employers”](#) on avoiding LGBT discrimination violations under California’s Fair Employment and Housing Act (FEHA). The guidance provides that:

- Employers should not ask applicants questions designed to detect sexual orientation or gender identity.
- Employers should not deny an employee the right to dress in a suitable manner for that employee’s gender identity.
- Employees have the right to use the restroom or locker room corresponding to their gender identity.

Similarly, on June 24, 2016, Washington D.C.’s Office of Human Rights partnered with the National LGBTQ Task Force to publish a resource guide, “Valuing Transgender Applicants & Employees: A Best Practices Guide for Employers.” The guide seeks to aid employers in creating workplace policies that prevent discrimination against LGBT individuals.

Along with following guidance from the EEOC and OSHA, the guide advises employers to work with their transgender or gender-nonconforming employees to develop a comfortable workplace environment. It also advises employers to establish clear rules requiring professional demeanor and provide timely responses to violations.

Employers should review policies and procedures to ensure compliance with all applicable local, state and federal laws and regulations.

If you have questions, please contact any of the Labor and Employment Department attorneys listed below or your usual Winston & Strawn contact.

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