

OSHA Provides Guide To Transgender Restroom Access

Transgender bathroom access issues have been the recent focus of political debate and the media spotlight and discussed in [Katie Triska's](#) recent article "[Transgender Employees: Six Recommendations For Employers](#)" (May 26, 2016). However, schools and educational facilities often form the epicenter of the discussion, and the Occupational Safety and Health Administration's (OSHA) position on restroom access sometimes goes unmentioned: "All employees, including transgender employees, should have access to restrooms that correspond to their gender identity."^[1] Because many employers are subject to OSHA regulation and because the issue of transgender restroom access currently is subject to a high degree of scrutiny, employers should understand and take steps to comply with OSHA's guidance on the issue.

OSHA's general goal is to assure that employers provide a safe and healthy working environment for employees: this duty includes providing employees with toilet facilities that are sanitary and available, so that employees can use them when they need to do so. Employers also must not impose unreasonable restrictions on employee use of toilet facilities. And, employers must protect all employees from any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site.^[2]

OSHA is addressing the transgender restroom issue, because its sanitation standard requires that employers provide employees with toilet facilities in order "to protect employees from the health effects created when toilets are not available. Such adverse effects include urinary tract infections and bowel and bladder problems."^[3] Thus, OSHA maintains that the sanitation standard applies to transgender restroom access, because restricting employees to restrooms that are inconsistent with their gender identity, or segregating them from other workers by requiring them to use gender-neutral or other specific restrooms, singles out those employees and may make them fear for their physical safety.^[4] Moreover, OSHA believes that bathroom restrictions can cause employees to avoid using restrooms while at work, potentially leading to serious physical injury or illness.^[5]

Other federal entities also have addressed gender identity and restroom access. For example, the Department of Labor requires federal contractors to allow

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transgender employees to use restrooms and other facilities consistent with their gender identity.^[6] The Equal Employment Opportunity Commission has ruled that transgender employees cannot be denied access to common restrooms used by other employees of the same gender identity.^[7] States that have addressed transgender restroom access in the employer/employee context include:

- **Colorado:** Employers must permit their employees to use restrooms appropriate to the employees' gender identity (rather than their assigned gender at birth) without being harassed or questioned.^[8]
- **Iowa:** Employers must allow employees access to restrooms in accordance with the employees' gender identity.^[9]
- **Minnesota:** A law prohibiting gender identity discrimination did not necessarily protect a transgender woman's right to use the women's restroom at work.^[10]
- **Utah:** A transgender bus driver could be fired based on claim that employer could be sued for her use of women's public restrooms along her bus route.^[11]
- **Vermont:** Employers must permit employees to access bathrooms in accordance with their gender identity.^[12]
- **Washington:** Employers must permit transgender employees to use the gender-specific restroom that is consistent with their gender identity; single occupancy restrooms should be designated as gender neutral.^[13]

Employers should stay tuned as the law on transgender restroom access continues to develop so that they can develop their employment policies and practices accordingly, in compliance with current laws and regulations. Failing to do so could lead to litigation or other negative consequences, but taking a proactive stance will benefit both employers and employees.

Finally, employers should ensure they comply with the non-gender-related aspects of OSHA's Sanitation Standard, including providing: prompt access to toilet facilities when needed (frequency needs may vary widely); an adequate number of restrooms to prevent long lines; at least a minimum number of toilet facilities; sanitary conditions; hot and cold running water or lukewarm water; hand soap or a similar cleansing agent; and warm air blowers or paper/cloth towels. Restrictions on restroom use should not be unreasonable or cause extended delays.



If you have any questions about OSHA's guide to transgender restroom access, OSHA's sanitation standard, or any other OSHA issue, please contact one of the authors of this e-alert or your Reinhart attorney.

[1] OSHA, *Best Practices A Guide to Restroom Access for Transgender Workers* (June 1, 2015), <https://www.osha.gov/Publications/OSHA3795.pdf>.

[2] *Id.*

[3] 29 CFR § 1910.141(c).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* (access cannot be denied regardless of whether employee had medical procedure or whether other employees may have negative reactions).

[8] OSHA, *supra* note 1.

[9] *Id.*

[10] ACLU *Transgender People and the Law, Frequently Asked Questions* (Mar. 2015); https://www.aclu.org/sites/default/files/field_pdf_file/lgbttransbrochurelaw2015electronic.pdf.

[11] *Id.*

[12] OSHA, *supra* note 1.

[13] *Id.*

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