

OSHA Issues Guidelines for Providing Restroom Access to Transgender Employees

BY DENISE M. VISCONTI ON JUNE 2, 2015

Continuing the trend by federal agencies toward greater protections for transgender employees, the Occupational Safety and Health Administration (OSHA) released "[A Guide to Restroom Access for Transgender Workers](http://www.dol.gov/asp/policy-development/TransgenderBathroomAccessBestPractices.pdf) (<http://www.dol.gov/asp/policy-development/TransgenderBathroomAccessBestPractices.pdf>)" on June 1, 2015.

Under current federal law, employers are required to provide all employees reasonable access to restroom facilities.¹ Additionally, an employer may not impose unreasonable restrictions on an employee's use of restroom facilities. It is OSHA's intent that "employees be able to use toilet facilities promptly" when the need arises to avoid the potential adverse health effects that can occur when restroom access is not immediately available.² Hence, employees cannot be limited to using facilities that are an unreasonable distance from their workspace or be required to wait an unreasonably long time to use available facilities.

In its Guide to Restroom Access for Transgender Workers, OSHA provides "model practices" for employers to follow when providing access to restrooms by transgender employees, including:

- All employees should be permitted to use the facilities that correspond with their gender identity. In other words, a person who identifies as male should be permitted to use the men's restroom, and a person who identifies as female should be permitted to use the women's restroom.
- Employees should be permitted to determine for themselves the most appropriate (and safest) restroom to use. As such, employers should refrain from requiring or deciding which restroom should be used by a particular employee.
- No employee should be required to use a restroom facility located away or apart from other employees because of their gender identity or transgender status. Doing so may run afoul of the requirements of Title VII of the Civil Rights Act of 1964. See 42 U.S.C. § 2000e-2(a)(2) (making it unlawful to "segregate" employees in any way that deprives or tends to deprive them of equal employment opportunities). Single-occupancy gender-neutral facilities or multi-occupancy unisex facilities may be offered as an option that all employees may choose – but may not be required – to use.

- Employers may not ask employees to provide any medical or legal documentation of their gender identity in order to gain access to gender-appropriate facilities. Nor may an employer condition access to a particular restroom on the employees' providing documentation demonstrating they have undergone any particular medical procedures. Requiring such documentation in order to access gender-specific facilities is unlawful in many state and local jurisdictions, and may open up the employer to a "gender stereotyping" claim under Title VII, i.e., a claim that the employee was subjected to discrimination based on the employer's perception that the employee failed to conform to a particular sex stereotype. Moreover, there is nothing in Title VII that permits the conditioning of access to facilities (or to other terms, conditions, or privileges of employment, for that matter) on the completion of a medical procedure – for transgender individuals or any other employee. Hence, an employer's unilateral determination of when someone has "proven" their gender, and thus may gain access to a particular facility, may provide the factual predicate to a claim of discrimination under Title VII and various state and local laws.

Above all else, OSHA's Guide to Restroom Access for Transgender Workers provides that, regardless of the physical layout of the employer's worksite, all employers need to find a solution that is safe and convenient for – and respectful of – *all* employees, including those employees who are transgender.

Notably, OSHA's Guide to Restroom Access for Transgender Workers disclaims it is creating any new legal obligations. Rather, as outlined above, it contains "recommendations" as well as descriptions of "mandatory safety and health standards." OSHA's Guide to Restroom Access for Transgender Workers also provides a toll-free number and website for those employees who believe their employers are not following OSHA standards. Employees can contact OSHA to make a complaint, which could lead to an on-site inspection of the employer's premises.

See Footnotes ▾

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Related Publications

[DOJ Changes Position on Gender Identity, Transgender Bias \(/publication-press/publication/doj-changes-position-gender-identity-transgender-bias\)](#)

[DOL Announces Final Rule Implementing Executive Order Prohibiting LGBT Discrimination in Government Contracting \(/publication-press/publication/dol-announces-final-rule-implementing-executive-order-prohibiting-lgbt\)](#)