



Massachusetts Passes Transgender Accommodations Law

Insights

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On July 11, 2016, Governor Charlie Baker signed Massachusetts's transgender accommodations bill into law, which will allow transgender individuals to use restrooms, changing rooms, and locker rooms that match their gender identities rather than the biological sex assigned at their birth.

It will also protect transgender individuals from discrimination in places of public accommodation and will prohibit advertising that discriminates on the basis of gender identity. The new law will go into effect October 1, except for the prohibition against discriminatory advertising, which is effective immediately.

Bathroom Use Question Resolved

Because Massachusetts' state discrimination law already protects individuals from employment discrimination based on gender identity, there can be no doubt that you now must permit transgender employees to use the bathroom that corresponds with their gender identity. Additionally, if you qualify as a place of public accommodation (i.e., any business that is used by the public, including in the retail, hospitality, or healthcare sectors), you should ensure that your practices comply with this law by October 1 and train employees and managers accordingly.

If an employee begins using a bathroom that does not correspond with their apparent current gender (including the gender identified on their human resources paperwork), nothing prohibits you from raising the issue with the employee. If the employee responds that they are transitioning to a different gender, however, you must permit them to use the bathroom of their choice, even if they are not currently dressing as that gender or presenting other indicators of that gender.

Collaboration Is Key

If an employee comes forward to announce that they are planning to transition to a different gender, the best practice is to engage in a collaborative discussion with the employee to plan for the transition. That conversation should include topics such as when the employee will begin dressing according to their gender identity, when they would like to start using the bathroom that corresponds with their gender identity, when and if they plan to change their name, what pronouns they feel comfortable using, and – perhaps most importantly – when and how they want this to be communicated to their coworkers. You should respect the employee's privacy and should avoid asking questions about the employee's medical or surgical history.

Conclusion

Employers facing these issues should seek advice from counsel to ensure compliance and to avoid costly discrimination litigation. The Massachusetts Commission Against Discrimination is authorized to adopt regulations to effectuate this law, which should be issued in the next several months. We will provide an update if these regulations include additional obligations or clarifications regarding the new law.

If you have any questions about this new law or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our Boston office at 617.722.0044.

This Legal Alert provides an overview of a specific new Massachusetts law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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