



How Florida's New Bathroom Law Will Impact Schools, Public Employers, and Businesses

Insights

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Florida lawmakers passed a bill on Wednesday that will make it a crime for individuals to use certain bathrooms that don't align with their gender at birth, raising many questions for schools, public employers, and businesses in the state. The Florida Safety in Private Spaces Act now heads to the Governor's office, where it is expected to be signed. **[Editor's Note: Governor DeSantis signed the bill into law on May 17.]** Once the new law takes effect on July 1, it will impact **all schools**, both private and public, throughout the state in a significant way – requiring them to take least three proactive steps to comply – and will also require affirmative steps by public employers. However, it will not require other private employers or businesses that open their doors to the public to make any changes to their policies or otherwise criminalize conduct in the private business setting – and will not shield employers or businesses from federal anti-discrimination law. What do Florida schools, public employers, and businesses need to know about this new law?

What Does the Law Say?

CS/HB 1521, entitled the “Safety in Private Spaces Act,” criminalizes the act of entering a bathroom or changing facility that does not correspond to the gender assigned to an individual at birth. “Changing facilities” include dressing rooms, fitting rooms, locker rooms, changing rooms, or shower rooms.

The law also requires any covered facility (including schools and public facilities) that maintains a bathroom to have at least one restroom designated for the exclusive use of “males” and one for the exclusive use of “females,” with the gender categories defined in the bill based on reproductive organs at birth. In the alternative, the facility can have a “unisex” restroom intended for single occupancy (or single-family occupancy) that has floor-to-ceiling walls and a locking door. The same rules apply for changing facilities. The law is unclear regarding whether schools and public facilities that have several different floors or buildings must designate all such communal restrooms and changing facilities (except unisex) as “male” or “female.”

With some limited exceptions for emergency, maintenance, or similar purposes, if a member of the opposite sex enters the bathroom or changing facility in violation of these restrictions, they are breaking the law and could be charged with the misdemeanor crime of trespass. However, as noted below, there are other consequences at play for those in the educational or public employer setting.

Schools Will Bear the Brunt of The New Law

The new law will have a dramatic impact on private and public schools – at all levels. It applies to all K-12 schools – public, private, and charter – not to mention colleges, universities, and all other postsecondary institutions in the state. It will require you to take three proactive steps in addition to designating restrooms and facilities as “male” or “female.”

3 Things Schools Must Do to Comply With the Law

- Schools must **establish disciplinary procedures in their codes of student conduct** that apply to those students who willfully enter the bathroom or changing facility that differs from that gender category they were assigned at birth and refuse to depart when asked by instructional, administrative, security, or student disciplinary personnel.
- Schools must also establish **workplace disciplinary policies** applicable to instructional or administrative personnel related to the same conduct (which may impact a school’s obligation to comply with other federal law, which is addressed below)
- Schools **must submit documentation** to the State Board of Education regarding their compliance before April 1, 2024 (or within one year of being established if the school opens its doors after July 1, 2023).

Consequences to Individuals Who Violate the Law

School instructional or administrative personnel or students cannot be criminally charged with violations of the law. Instead, instructional or administrative personnel will be considered to have **violated rules of professional conduct** – the Principles of Professional Conduct for the Education Profession which applies to certified educators of public or private schools or the State Board of Education rules or Board of Governors regulation for public school employees – if they violate the law. And of course, students will be subject to the mandatory **school disciplinary policies**.

Consequences to Schools That Do Not Enforce the Law

Beginning July 1, 2024, individuals can file complaints with the state Attorney General alleging that the school is not compliance with the law. The AG’s office can issue penalties or take licensure or regulatory disciplinary action against any school found to be in violation. Or the state can file a civil action in court and seek to fine the school up to \$10,000 for the violation.

Public Employers Must Also Take Affirmative Steps

A similar structure applies for public employers. They must establish disciplinary procedures for their employees who willfully enter restrooms or changing facilities in public buildings that differ from that gender category they were assigned at birth and refuse to depart when asked by administrative personnel.

Just as with schools, public-sector employees will not be subject to criminal trespass charges for violating the law. However, they will be subject to the new disciplinary procedures established as a result of the law.

No Impact on Private Employers and Businesses

As noted above, the new law will not impact private employers or other private businesses that open their doors to the public (restaurants, hotels, retail establishments, etc.). While an earlier version of the bill would have required all employers to comply with the restrictions, that portion of the proposed law was dropped during legislative negotiations.

But Wait, There's More: Title VII, ADA, and OSHA Concerns

Employers covered by this law (and those not covered who choose to follow it) should be concerned that their actions in complying with this law may cause them to violate federal law if they discriminate against applicants or employees based upon their gender identity. That's because aggrieved individuals may still turn to federal and state courts or the EEOC and FCHR in situations where they believe they are being discriminated against on the basis of gender identity.

Title VII, the federal anti-bias law that applies to businesses with 15 or more employees, and the Florida Civil Rights Act prohibit discrimination on the basis of one's sex (among other things). Over the years, the Supreme Court and the EEOC have interpreted the law to prohibit mistreatment of individuals based on gender identity. Further, federal appeals courts have started to rule that gender dysphoria – a medical condition where an “incongruence between their gender identity and assigned sex” results in “clinically significant distress” – can be a disability under federal disability discrimination law.

On the other hand, for private employers, OSHA may assess fines against businesses for creating conditions that lead to health and safety problems or otherwise make employees feel unsafe. This could include mandating that employees use the restroom that corresponds with their anatomy at birth instead of their gender identity.

For these reasons, private employers should think twice about simply mimicking the restrictions contained in the new law and applying them in their workplace settings. Contact your Fisher Phillips attorney with any questions about compliance or establishing workplace policies.

What Should You Do?

Schools in Florida should immediately contact their Fisher Phillips attorney to begin discussions about establishing the policies and procedures to ensure compliance with the new law. You should also consider holding training sessions for your employees to educate them about their responsibilities and consequences for violating the law.

Public-sector employers governed by this law should also begin the process of developing compliant policies and establishing workplace protocols to ensure compliance. While you have a few months before the law comes online, you can begin the process of learning about the law and training your employees in advance of the effective date.

If you have additional questions about these impending changes, or need assistance in drafting compliant policies, reach out to your Fisher Phillips attorney, the authors of this Insight, any attorney in [our three Florida offices](#), or any member of [our Education Team](#). We'll continue to monitor the status of this law and any legal challenges and will provide updates as warranted, so make sure you are signed up for [Fisher Phillips' Insight System](#) to receive the latest news directly in your inbox.

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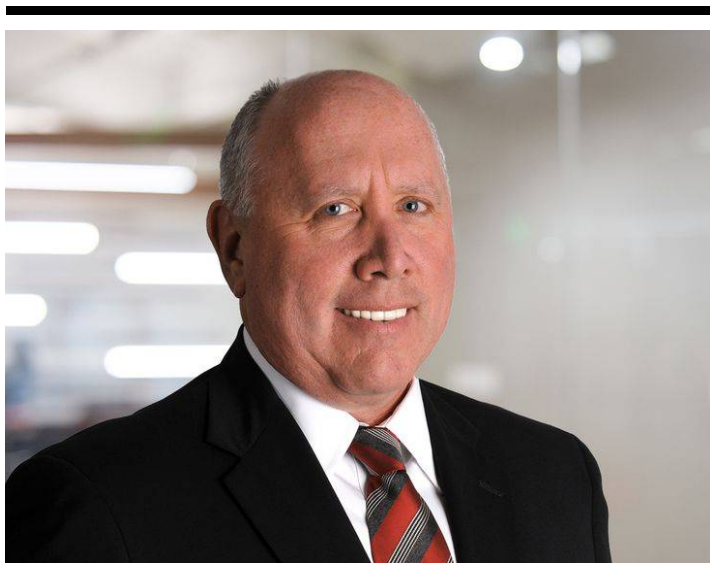
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