



Florida's New Bathroom Law: What Do Schools Need to Know?

Insights

6.30.23

As schools prepare for the upcoming academic year, you should consider the impact of Florida's new law addressing locker room and bathroom use. The Safety in Private Spaces Act was recently signed into law by Governor DeSantis and takes effect on July 1. Last month, we provided some general insight on this new law and explained how schools at all levels will need to take action to comply. With the new school year just around the corner, we are providing a more detailed analysis of how the act will affect your school. Here are the answers to your six top questions, including three options for compliance.

1. Which Schools Are Covered Under the Law?

Florida's Safety in Private Spaces Act applies to educational institutions at all levels, regardless of whether the institution is public or private. Under the law, "educational institutions" includes all K-12 schools, as well as state universities, Florida College Systems, career centers, and all other post-secondary institutions in the state: public, private, and charter schools alike.

2. What Does the Law Say?

Schools are now required to designate at least one restroom for the exclusive use of "males" and one for the exclusive use of "females," with these terms defined as referring to an individual's assigned biological sex at birth. "Sex" is defined as the classification of a person as either female or male based on "the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth." Individuals may only enter these designated restrooms or changing facilities if it corresponds with their assigned biological sex at birth. A changing facility is defined to include dressing rooms, fitting rooms, locker rooms, changing rooms, or shower rooms.

Alternatively, schools can have at least one "unisex" restroom, which is defined as a space intended for single occupancy or single-family occupancy that has floor-to-ceiling walls, as well as a full door with a secure lock preventing others from entering while in use. The same rule applies to changing facilities.

There are a few exceptions in the law that would allow an individual to enter a restroom or changing facility designated for the opposite sex, including accompanying a child under the age of 12;

rendering emergency medical assistance; assisting a person with a disability; or for maintenance, law enforcement, or inspection purposes, and the like.

3. What Are Your School's Obligations?

- To comply with the law, your school, *at a minimum*, must have:
 - A restroom designated for exclusive use by females and a restroom designated for exclusive use by males (consistent with how the law defines female and male based on sex assigned at birth), OR
 - A unisex restroom (also as defined in the statute).

If your school also has changing facilities, such as locker rooms, then the same requirements apply: either a unisex changing facility OR a changing facility designated for exclusive use by females and males as defined in the law.

The law does **not** require you to have both options.

- Additionally, under the law, schools are required to establish disciplinary procedures within their code of conduct for students and instructional or administrative employees who *willfully* enter a bathroom or changing facility of the opposite sex for an unauthorized purpose and refuse to depart when asked to do so by instructional, administrative, or school security personnel. The statute does not describe the type of disciplinary measures to be taken against a student or administrative and instructional personnel who fail to comply with the law. We can assist your school in crafting these policies and procedures.
- Lastly, your school must submit documentation to the State Board of Education regarding your school's compliance with the law no later than April 1, 2024 (or within one year of being established if your school first opens after July 1, 2023). What documentation will be required by the State Board of Education has yet to be determined.

4. What Consequences Do Individuals Face for Noncompliance?

Students who violate the law will be disciplined in accordance with the procedures implemented in the school's code of student conduct.

On the other hand, state certified instructional and administrative personnel who violate the law face both disciplinary measures outlined in the school's policies, as well as penalties under the Principles of Professional Conduct for the Education Profession, the State Board of Education rule, or Board of Governors regulations, whichever applies.

While the statute includes criminal penalties for those who willfully violate the law, these criminal penalties do not apply to students and instructional and administrative personnel. All others, however, risk criminal trespass charges, potentially punishable by up to one year in jail. In other

words, schools should police their visitors to ensure that they are utilizing the proper restrooms/facilities.

5. What Consequences Does your School Face for Noncompliance?

Failure to comply with the law's requirements for designated restrooms and changing facilities could subject your school to fines and licensure or regulatory disciplinary action. Beginning July 1, 2024, schools that are not in compliance with the law could face civil action by the Attorney General, including claims for injunctive relief and fines up to \$10,000. The law does not provide for private claims by students, parents, or employees.

6. What Are Your School's Options for Compliance?

As a new law, the requirements have yet to be tested and there are no regulations that interpret it. That does not mean your school should delay taking affirmative steps to comply and reduce your risk of litigation. There are several options for you to consider:

Option 1: Designating some, but not all, of the restrooms on your campus for males and females (as defined by the law). One interpretation of the law is that it requires schools to only designate at least one restroom and changing facility for exclusive use by females and one restroom and changing facility for exclusive use by males, OR in the alternative, one unisex restroom and changing facility. Of course, schools can also designate more than just one restroom/changing facility for males and females across campus, which may be appropriate given the size of your school.

Reading the law as such would allow schools to specifically designate certain restrooms to be used only by males or females as defined by the law, and then treat all other restrooms as facilities that can be used without those restrictions.

However, the law does not specify how the school should "designate" such restrooms/changing facilities. If schools decide to proceed with this option, they should consider making clear the designation — whether by signage or by policy/memorandum distributed to the community — that such restrooms/changing facilities are so designated in accordance with the law.

Option 2: Labeling/Converting communal restrooms as unisex. Alternatively, a school might consider having certain (or all) communal restrooms converted to unisex. If you choose to do so, you must ensure that all unisex stalls are enclosed by floor-to-ceiling walls and a full door with a secure lock. You should also ensure by signage and in your policy that students/employees who choose to use these restrooms cannot engage in behaviors that require privacy (changing clothes, etc.) in the common areas of such communal restrooms. This option could be costly: it may require changing the structure of already existing restrooms and facilities.

Option 3: Designating all restrooms and changing facilities on campus for males and females (as defined by the law). Schools could make the decision to forgo unisex restrooms and changing facilities entirely and thus have all restrooms/changing facilities designated as “Biological Males” and “Biological Females” only. This course of action is unlikely to run afoul of Florida’s new law, however, it could increase the risk of discrimination claims by students and employees whose gender identity does not align with their sex assigned at birth and who are forced to use a facility which does not correspond with their identity. These claims could be brought under federal laws, such as Title VII (which prohibits discrimination on the basis of gender identity) or Title IX (for those schools accepting federal financial assistance), or under local ordinances where the county or city has a public accommodation provision requiring non-discrimination on the basis of gender identity.

Conclusion

It is impossible to anticipate every issue that could arise under this new law. Schools should review student and employee policies in light of this new law. Please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney on [our Education Team](#) to discuss alternatives that will best meet your school’s needs. We will also monitor all developments in this area, including any legal challenges, and provide updates as warranted. So, you should ensure you are subscribed to [Fisher Phillips’ Insight System](#) to gather the most up-to-date information.

Related People



Suzanne K. Bogdan
Partner
954.847.4705
[Email](#)





Jennifer B. Carroll
Partner
954.847.4716
Email



Ilanit Fischler
Partner
954.847.4723
Email



Megan L. Janes
Partner
954.847.4717
Email



Sarah Leon
Associate
954.847.4719
Email

Service Focus

Counseling and Advice

Industry Focus

Education