

Where Do I Pee? “The Bathroom Corresponding to Your Gender Identity” Says the EEOC

1 min read

May 4, 2016

Bathroom use by transgender individuals is today’s hot-button civil rights issue. The often strong and disparate opinions about the subject creates a conundrum for employers: How do we make everyone comfortable while ensuring a safe and inclusive environment? And how do we do that without violating the law?

On May 3, 2016, the EEOC issued a fact sheet titled “Bathroom Access Rights for Transgender Employees Under Title VII.” Although the fact sheet addresses bathroom use specifically, it also sheds light on the EEOC’s broader position that transgender is a protected class, and any adverse employment action or harassment based on gender identity violates Title VII. Here are the important takeaways for employers:

- The EEOC takes the position that discrimination based on transgender status violates Title VII.
- An employer cannot condition the employee’s right to use the bathroom of his or her choice on undergoing sex reassignment surgery or providing medical documentation confirming that he or she has undergone such procedures.
- State laws requiring transgender individuals to use the bathroom corresponding to the sex assigned at birth, such as North Carolina’s hotly-debated bathroom law, is not a defense.
- Restricting transgender employees to use of single occupancy bathrooms is discriminatory (although employers can make a single occupancy bathroom available to all employees who choose to use it).
- The opinions of or discomfort expressed by coworkers does not justify discrimination.

The bottom line: treat transgender employees as you would your other employees. Employers should not rely on outdated law holding “transgender” is not a protected status under Title VII. These laws are subject to reversal, and the EEOC has stated in no uncertain terms it will enforce Title VII as though transgender is a protected class. It remains unclear how courts will handle state laws conflicting with the EEOC’s position. If your company is in a state with conflicting laws, consult your attorney.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

Discrimination, Title VII, Gender Discrimination, Sex Discrimination, Title VII Of The Civil Rights Act Of 1964, Transgender Rights, LGBTQ Rights