

EEOC Issues Guidance On Transgender Bathroom Access

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According to the United States Equal Employment Opportunity Commission (EEOC), employers who fail to provide transgender workers access to a bathroom consistent with the workers' gender identity will be engaging in gender discrimination in violation of Title VII. The EEOC recently publicized a fact sheet clarifying its position that, among other things, employers may not deny access to a common restroom corresponding to the employee's gender identify and cannot condition an employee's restroom access on the employee providing proof of medical procedure. Additionally, employers cannot avoid the requirement to provide equal access to a common restroom by requiring a transgender employee to utilize a single-user restroom, although it permits the employer to provide a single-user restroom to all employees. The EEOC further clarified its position that protecting co-workers' comfort level is not a valid defense to actions that otherwise deny transgender employees access to a common restroom consistent with their gender preferences: "Title VII prohibits discrimination based on sex whether motivated by hostility, by a desire to protect people of a certain gender, by gender stereotypes, or by the desire to accommodate other people's prejudices or discomfort." As this is a constantly evolving area of the law and a heavily debated topic, we recommend contacting your employment counsel with any questions.

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