

Fitness Industry Legal Update – Winter 2018

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The increasing number of legislation on public accommodation and transgender restrooms has affected several industries. In the fitness industry, it is important for gyms and fitness clubs and facilities to adopt transgender-inclusive policies that permit transgender club members and employees to use restrooms and locker rooms assigned based on their gender expression. This would set the standard for employees and club members and send a message that the club promotes a respectful and inclusive workplace.

The Occupational Safety and Health Administration (OSHA) and the Equal Employment Opportunity Commission (EEOC) have issued guidance regarding restroom accommodations, which apply equally to locker room accommodations.

Model Practices for Restroom Access for Transgender Employees

Many companies have implemented written policies to ensure that all employees (including transgender employees) have prompt access to appropriate sanitary facilities. It is important that employers apply transgender-inclusive policies equally to club members. The core belief underlying these policies is that all employees and club members should be permitted to use the facilities that correspond with their gender identity. For example, a person who identifies as a man should be permitted to use men's restrooms, and a person who identifies as a woman should be permitted to use women's restrooms. The employee or club member should determine the most appropriate and safest option for himself or herself.

The [best policies](#) also provide additional options, which employees or club members may choose, but are not required, to use. These include:

- Single-occupancy, gender-neutral (unisex) facilities; and
- Multiple-occupant, gender-neutral restroom facilities with lockable single-occupant stalls.

Regardless of the physical layout of a worksite, all employers need to find solutions that are safe and convenient and respectful of transgender employees and club members.

EEOC Decisions

In *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (Apr. 12, 2012), the EEOC ruled in a federal sector appellate case that discrimination based on transgender status is sex discrimination in violation of Title VII of the Civil Rights Act. In *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015), also a federal sector appeal, the EEOC held that:

1. A federal agency that denied an employee equal access to a common bathroom or facility corresponding to the employee's gender identity discriminated on the basis of sex; and
2. The agency could not avoid the requirement to provide equal access to a common bathroom or facility by restricting a transgender employee to a single-user restroom instead (though the employer can make a single-user restroom available to all employees who might choose to use it).

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