

Maryland to Ban Discrimination on Basis of Gender Identity

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The Maryland House of Delegates has approved a bill banning **discrimination** on the basis of **gender identity**, positioning Maryland to join 17 other states, the District of Columbia, and Puerto Rico in providing protections from unlawful discrimination to employees based on gender identity. The anti-discrimination laws of certain localities in Maryland (i.e., Baltimore City, Baltimore County, Howard County, and Montgomery County) already prohibit discrimination on the basis of gender identity.

The Legislation

The **Fairness for All Marylanders Act of 2014** (“the Act”) passed the Senate by a vote of 32-15 and in the House by a vote of 82-57. The Act awaits the signature of Governor Martin O’Malley, which is expected shortly. It would become effective on October 1, 2014.

The Act amends the **Maryland Fair Employment Practices Act** (Md. Code Ann., State Gov’t § 20-01 *et seq.*) (“Title 20”) to prohibit discrimination in employment, labor, housing, and public accommodation based on an individual’s gender identity. This would be the first major amendment to Title 20 since 2001, when it was amended to prohibit discrimination on the basis of sexual orientation.

The Act prohibits Maryland employers from discriminating against job applicants or employees on the basis of gender identity. The term “gender identity” is defined broadly as “the gender-related identity, appearance, expression, or behavior of a person, regardless of the person’s assigned sex at birth, which may be demonstrated by (1) consistent and uniform assertion of the person’s gender identity; or (2) any other evidence that the gender identity is sincerely held as part of the person’s core identity.”

The Act’s protections are not limited to individuals who have undergone, or are in the process of undergoing, sex reassignment surgery. Further, it does not specify what characteristics of one’s identity, appearance, or behavior are gender-related. Employers will be required to assess, likely on a

case-by-case basis, which characteristics are protected.

Employees who believe they have been discriminated against on the basis of gender identity may file a complaint with the Maryland Commission on Civil Rights.

Implications for Employers

Employers should review and revise their policies to ensure compliance with the anticipated enactment. Policies that may require revision include, but are not limited to:

- equal employment opportunity and anti-discrimination/harassment policies;
- grooming, personal appearance and dress code policies;
- conduct-related policies; and
- any policies related to the use of locker rooms, restrooms, and gender-specific facilities.

It is not clear from the language of the Act whether an employer may require an employee to use only the restroom used by members of the employee's biological sex. Employers may be required to consider accommodations regarding restroom use for individuals who have undergone, or are in the process of undergoing, sex reassignment surgery.

Employers should be wary about the possibility of claims of discrimination or harassment based on gender identity. To minimize such claims, employers should implement robust anti-discrimination policies and include information relating to discrimination and harassment based on gender identity into any training provided to managers and employees.

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National Law Review, Volume IV, Number 90

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