

OSHA Issues Guidance on Restroom Access for Transgender Workers

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On June 1, 2015, **OSHA** announced its new Best Practices: A Guide to Restroom Access for Transgender Workers. The core principle underlying OSHA's best practices is that: "All employees, including transgender employees, should have access to restrooms that correspond to their gender identity."

OSHA's Sanitation standard (29 C.F.R. § 1910.141(c)) mandates that employers who fall under OSHA's jurisdiction provide employees with sanitary and available toilets facilities for each sex. The total number of toilet facilities that must be provided is based upon the number of workers at each location. The requirement to provide readily available toilet facilities protects workers from the health risks (such as urinary tract and bladder infections) which may arise if employees are unable to use the restroom. Thus, according to OSHA, restricting employees to use only restrooms that are not consistent with their gender identity, or segregating them from other workers by requiring them to use gender-neutral or other specific restrooms can result in serious physical injury or illness when employees avoid using such restrooms altogether due to fear for physical safety or shame over being singled out.

OSHA's model practices for restroom access for transgender employees advises that employers allow employees to use whichever restroom corresponds to an employee's internal gender identity and that employees be given the freedom to determine the most appropriate and safest restroom option. OSHA notes that transgender employees should not be discriminated against by being singled out to use a gender neutral bathroom, nor should they be denied access to the bathroom which corresponds to their internal gender identity. For example, if someone lives his life as a man who was designated female at birth, he should be able to use the male restrooms at work; similarly, someone living as a woman whose birth certificate labels her male, should be allowed to use the female restrooms at work. OSHA also advises under the model practices that employers not require employees to provide any medical or legal documentation regarding their gender in order to access the restroom that corresponds to their gender identity.

OSHA has suggested two options to employers rather than the traditional Male/Female bathrooms. Employers can designate single-occupancy bathrooms as gender-neutral for use by all their employees *or* install multi-occupant, gender-neutral restroom facilities with lockable single occupant stalls.

OSHA encourages employers to check state and local laws and regulations for any localized variances and notes that Colorado, Delaware, District of Columbia, Iowa, Vermont and Washington have state laws regarding restroom access. In the best practices, OSHA also makes employers aware that in April 2015, the EEOC ruled that denying a transgender employee access to a restroom consistent with his/her internal gender identity constitutes sexual discrimination under Title VII.

To read the News Release and Best Practices Guide to Restroom Access for Transgender Workers in full, go to <https://www.osha.gov/newsrelease/trade-20150601.html>

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