

# EEOC Warns US Employers That State Law Cannot Be Used to Justify Transgender Discrimination

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The United States Equal Employment Opportunity Commission (“EEOC”) reminded employers this week in no uncertain terms that they are required to provide transgender workers with access to bathrooms that corresponds with their gender identity. A failure to do so – the EEOC warned – runs the risk of violating Title VII of the Civil Rights Act.

The EEOC’s admonition comes less than two months after the North Carolina passed a law blocking local governments from granting civil rights protections to LGBT individuals and from passing minimum-wage requirements that are higher than provided by state law. The North Carolina bill was adopted into law on an expedited basis a week before a Charlotte city ordinance was set to take effect allowing transgendered individuals to use the bathroom of their choice.

North Carolina’s law is not the only recent legislation directed at the transgender community. In February, it took a bipartisan effort to narrowly defeat legislation in Virginia that proposed to prevent transgendered individuals from using facilities consistent with their gender identity in public schools and government-owned facilities.

The EEOC fired back yesterday, putting out a [fact sheet](#) stating that “contrary state law is not a defense to Title VII,” meaning that discrimination permitted under state law may still violate federal law. The EEOC explained that “[g]ender-based stereotypes, perceptions, or comfort level must not interfere with the ability of any employee to work free from discrimination, including harassment.” The EEOC further explained that similar to other non-discrimination provisions, transgender protections do not require individuals to change their personal beliefs. Instead, these protections “seek to ensure appropriate workplace treatment so that all employees may perform their jobs free from discrimination.”

The EEOC has been active in recent years addressing discrimination against the transgender community. In 2015, the EEOC issued an opinion determining that:

- denying an employee equal access to a common restroom corresponding to the employee’s gender identity is sex discrimination;
- an employer cannot condition this right on the employee undergoing or providing proof of

surgery or any other medical procedure; and

- an employer cannot avoid the requirement to provide equal access to a common restroom 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).

*Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015).

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