

Employer Alert: OSHA Speaks Out on Transgender Bathroom Guidelines

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On June 1, 2015, The Occupational Safety and Health Administration (OSHA) released “A Guide to Restroom Access for Transgender Workers”. Under current federal law, employers are required to provide all employees reasonable access to restroom facilities. Now under OSHA’s “model practices” for employers to follow when providing access to restrooms by transgender employees, including:

- All employees should be permitted to use the facilities that correspond with their gender identity. Employees should be permitted to determine for themselves the most appropriate (and safest) restroom to use. As such, employers should refrain from requiring or deciding which restroom should be used by a particular employee.
- No employee should be required to use a restroom facility located away or apart from other employees because of their gender identity or transgender status. Single-occupancy gender-neutral facilities or multi-occupancy unisex facilities may be offered as an option that all employees may choose – but may not be required – to use.
- Employers may not ask employees to provide any medical or legal documentation of their gender identity in order to gain access to gender-appropriate facilities. Nor may an employer condition access to a particular restroom on the employees' providing documentation demonstrating they have undergone any particular medical procedures.
- Regardless of the physical layout of the employer’s worksite, all employers need to find a solution that is safe and convenient for – and respectful of – all employees, including those employees who are transgender.

Employer Lessons: Employers must immediately review and evaluate any work rules, handbooks, or policies related to transgender bathroom guidelines to ensure that they will withstand OSHA and EEOC scrutiny. In conducting this review, qualified counsel can assist in adding or modifying current language to ensure their policy protects their business interests.