Information and Recommendations Regarding
The Use Of The Bathroom by Transgender Employees
by Moonhawk River Stone © 2006

Sometimes people have concerns about the gender transitioning person's use of the bathroom. In the following is intended to assist Company management in addressing those concerns.

1) Once a person legally changes both their name and their gender on their Driver's License (and/or NYS Photo ID Card, if no DL), they are considered, regardless of anatomy, to be the gender now so designated on their identity papers and thus, are to use the restroom which matches that designation.

2) It has been established in some court cases that Title VII of the Federal Civil Rights law supports the above; and also OSHA regulations support the above.

3) The transitioning person is just doing what every other employee is doing in the restroom--taking care of their business and moving on back to their duties. Informationally, the legal gender change does not occur until people have had substantial biologic changes hormonally and anatomically so as to only function in the true gender. One must remember that despite anatomy, the person has always been, since birth, the gender they are now revealing to everyone. Additionally, a person may spend a considerable period of time before moving on to surgery—and this may occur for a variety of reasons—health, financial, family and as such should not be unduly punished for their life circumstances or the discriminatory nature of the health care system.

4) Regarding a transgendered, non transsexual, employee's use of the bathroom. It is recommended that the employee use the bathroom matching the current gender presentation. It should be noted that there exists to date no known case of a person deliberately misrepresenting their sex/gender in a restroom for the sole purposes of committing a crime. This is a myth.

5) Depending upon the issue(s) arising at a particular work site, the transitioning person sometimes uses a single person restroom during a couple of months period of adjustment; or conversely, management may decide to offer this accommodation to a non transitioning employee for their comfort.

6) Regarding the need for a transgender/transsexual employee's required use of a shower, the Company is encouraged to be accommodating and creative with regard to issues of communal lockers, communal disrobing, and showering, so all feel safe and respected.

7) The key to having the bathroom issue be smooth is management's clear leadership in establishing, maintaining and enforcing a consistent policy with regard to the above. This should be combined with in depth management and employee education. Central to the policy should be the values of safety, convenience, and dignity for both the transgendered employee and his/her coworkers. It is recommended that the transgender employee and/or his/her representative or union be involved in all such bathroom decisions and feel the outcome is agreeable and non discriminatory.

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8) When a Company’s bathrooms are part of a public accommodation in a larger building, then it is the duty of the Company to take leadership with the landlord in addressing the issue well ahead of time. It should be noted that current research indicates that there are no state or local statues which specifically designate public accommodation bathroom to be separated by gender. The recent (12/02) Boston transgender civil rights ordinance contains specific language designating bathroom, shower, and dressing room accommodation based on “the gender identity publicly and exclusively expressed or asserted by the person seeking to use [such accommodations].”

Relevant Text Of Boston Ordinance Regarding Bathroom Usage

An Ordinance Regarding Discrimination Based on Gender Identity or Expression

CBC Section 12-9.7 is amended to add "gender identity or expression" and to incorporate an exception as follows:

"It shall be an unlawful practice and thereby deemed a violation of this Chapter for any person that owns, leases, rents, operates, manages, or in any manner controls a public accommodation directly or indirectly, or who provides a public service, to withhold, deny, curtail or in any manner limit or discriminate with respect to the full use of such public accommodation or service because of the race, color, sex, gender identity or expression, age, religious creed, disability, national origin or ancestry, sexual orientation, marital status, parental status, prior psychiatric treatment, military status, ex-offender status or source of income of such individual, unless such public accommodation or service specifically designated for the exclusive use of the elderly or disabled, provided, however, nothing contained herein shall permit the use of restrooms, baths, showers, dressing rooms, or other private accommodations which are separated by sex to be used by the opposite sex, except it shall be an unlawful and discriminatory practice to prevent or prohibit the use of restrooms, baths, showers, dressing rooms, or other private accommodations based on the gender identity publicly and exclusively expressed or asserted by the person seeking to use such restrooms, baths, showers, dressing rooms, or other private accommodations."

9) Finally, the employer might wish to identify, designate, or create gender neutral bathrooms which may be used by anyone. When planning new construction or renovations to existing space, the employer might wish to consider including such bathrooms in the plan.

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