
Labor & Employment Law Alert – OSHA Issues Guidance Relating to Accessibility of Workplace Restrooms for Transgender Employees

The Occupational Safety and Health Administration (OSHA) has issued guidance to private sector employers relating to the accessibility of workplace restrooms for transgender employees.

A link to the new guidance can be found here: <https://www.osha.gov/Publications/OSHA3795.pdf>

In essence, the guidance emphasizes that all employees (transgender employees included) should have access to restrooms that correspond to their gender identity. As a refresher, “gender identity” refers to an individual’s private sense and subjective experience of gender that may be different than the sex the person was assigned at birth. For example, a transgender man is someone who identifies as a man, but was considered a female at birth.

Best practices for workplace restroom accessibility for all employees, as suggested by the OSHA guidance, include:

- Allowing employees to determine for themselves which restroom is the most appropriate and safest option;
- Prohibiting requests by supervisors for medical or legal documentation of gender identity in order to have access to gender-appropriate facilities;
- Having single-occupancy gender-neutral (unisex) facilities;
- Ensuring that multiple-occupant, gender-neutral restroom facilities have lockable single-occupant stalls; and
- Refraining from requiring transgender employees to use a segregated facility because of their gender identity.

While the issuance of new guidance is not the same as a change in federal regulation, employers who do not follow OSHA’s advice could potentially find themselves cited for violations of the general duty clause, Section 5(a)(1) of the Occupational Safety and Health Act.

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