

OSHA and Transgender Employees

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On June 1, 2015, the Occupational Safety and Health Administration (OSHA) announced its new Best Practices: A Guide to Restroom Access for Transgender Workers. OSHA's issuance of this guidance was developed at the request of the National Center for Transgender Equality.

OSHA standards mandate that employers who are subject to OSHA's jurisdiction provide their employees with available toilet facilities for each sex. OSHA's guidance for restroom access for transgender employees recommends that employers allow employees to use whichever restroom corresponds to an employee's gender identity and that employees be given the freedom to determine the most appropriate restroom option. For example, if an employee lives as a woman, but was designated male at birth, the employee should be able to use the female restrooms in the workplace.

Further, OSHA advises that transgender employees should not be discriminated against by being singled out to use a gender neutral bathroom. OSHA also notes that employers may not require employees to provide any documentary evidence of their gender identity. According to OSHA, if employees are afraid or uncomfortable in using a particular restroom, they might avoid using the restroom while at work, creating serious health concerns.

In its best practices, OSHA suggests two options as alternatives to the traditional men/women bathroom arrangement. Specifically, employers may designate single-occupancy bathrooms as gender-neutral for use by all employees or install multi-occupant, gender-neutral restroom facilities with lockable single occupant stalls. OSHA's full guidance may be found here --

www.dol.gov/asp/policy-development/TransgenderBathroomAccessBestPractices.pdf.

Based on OSHA's guidance, even if employers do not currently employ transgender individuals, they should give serious consideration regarding the issue so that they are prepared to address it in the event it may arise.