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Federal OSHA publishes guide to restroom access for transgender workers

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Coincident with the recent publicity about Bruce “Caitlyn” Jenner, on June 1, 2015, the federal Occupational Safety & Health Administration published a guide to restroom access for transgender workers. The publication provides guidance to employers on best practices regarding restroom access for transgender workers. It is a guide, not a legal requirement.

OSHA’s sanitation standard requires that all employers under its jurisdiction provide employees with sanitary and available toilet facilities. This standard applies to transgender employees as much as it applies to other employees.

OSHA says the “core principle” of the guide is that “all employees, including transgender employees, should have access to restrooms that correspond to their gender identity.” So, for example, a transgender man, i.e., a biological female at birth who identifies as a man, should be permitted to use men’s restrooms, and a transgender woman, i.e., a biological male at birth who identifies as a woman, should be permitted to use women’s restrooms.

The guide says that the best company policies provide additional options which employees may choose but are not required to use, including single occupancy, gender-neutral (unisex) facilities, and multiple-occupant, gender-neutral restroom facilities with lockable single occupant stalls.

Further, the guide says that these best practices do not require employees to provide any medical or legal documentation of their gender identity in order to have access to gender-appropriate facilities.

In addition, no employee should be required to use a segregated facility apart from other employees because of their gender identity or transgender status. Under OSHA standards, employees generally may not be limited to using restrooms that are an unreasonable distance or travel time from the employee’s worksite.

Finally, the guide points out that the Equal Employment

Opportunity Commission and some other federal agencies have interpreted the prohibitions against sex discrimination found in Title VII of the Civil Rights Act of 1964 to prohibit employment discrimination based on gender identity or transgender status.

However, the courts are divided on this issue. In addition, some states, including Colorado, the District of Columbia, Iowa, and Vermont, have laws that require employers to allow employees access to restrooms in accordance with their gender identity. Kentucky currently has no such law.

While some cities in the Commonwealth have adopted “fairness” ordinances that prohibit discrimination in employment and public accommodations against LGBT individuals, these ordinances do not explicitly address access to restrooms.

Notes on the transgender restroom issue

New York City, June 26 — CBSNew York/AP reports that legislation is being introduced that would require businesses in NYC to convert one-person restrooms — in both public and private buildings — to gender neutral facilities. The law would require businesses to place new signage on existing restrooms to identify them as gender-neutral. It would not apply to lavatories with multiple fixtures. The proposal follows similar laws enacted over the last decade in cities across the country, including Philadelphia and the District of Columbia.

Kentucky lawmakers considered a bill earlier this year, during the 2015 session of the General Assembly, that would have forbidden transgender students in public schools from using school bathrooms designated for their opposite biological sex, i.e., opposite the transgender’s sex at birth. The bill, SB 76, sponsored by Sen. C.B. Embry, R-Morgantown, was a reaction to a policy at Atherton High School in Louisville, which allows students to use the bathroom of their sexual identity. Embry’s bill passed the Senate 27-9 on a party line vote, but failed in committee in the Democrat-controlled House of Representatives. In light of OSHA’s new Guide to restroom access announced on June 1, this whole issue could become a hot one for Kentucky lawmakers in future sessions.