



## Fact Sheet: Bathroom Access Rights for Transgender Employees under Title VII of the Civil Rights Act of 1964

- "Transgender" refers to people whose gender identity and/or expression is different from the sex assigned to them at birth (e.g. the sex listed on an original birth certificate). The term transgender woman typically is used to refer to someone who was assigned the male sex at birth but who identifies as a female. Likewise, the term transgender man typically is used to refer to someone who was assigned the female sex at birth but who identifies as male. A person does not need to undergo any medical procedure to be considered a transgender man or a transgender woman.
- In addition to other federal laws, the U.S. Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, national origin, religion, and sex (including pregnancy, gender identity, and sexual orientation). Title VII applies to all federal, state, and local government agencies in their capacity as employers, and to all private employers with 15 or more employees.
- In *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (Apr. 12, 2012), the EEOC ruled that discrimination based on transgender status is sex discrimination in violation of Title VII, and in *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015), the EEOC held that:
  - denying an employee equal access to a common restroom corresponding to the employee's gender identity is sex discrimination;
  - an employer cannot condition this right on the employee undergoing or providing proof of surgery or any other medical procedure; and,
  - an employer cannot avoid the requirement to provide equal access to a common restroom by restricting a transgender employee to a single-user restroom instead (though the employer can make a single-user restroom available to all employees who might choose to use it).
- Contrary state law is not a defense under Title VII. 42 U.S.C. § 2000e-7.
- In *G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, -- F.3d --, 2016 WL 1567467 (4th Cir. 2016), the United States Court of Appeals for the Fourth Circuit reached a similar conclusion by deferring to the Department of Education's position that the prohibition against sex discrimination under Title IX requires educational institutions to give transgender students restroom and locker access consistent with their gender identity.

# EEOC NEWS

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION



- Gender-based stereotypes, perceptions, or comfort level must not interfere with the ability of any employee to work free from discrimination, including harassment. As the Commission observed in *Lusardi*: "[S]upervisory or co-worker confusion or anxiety cannot justify discriminatory terms and conditions of employment. Title VII prohibits discrimination based on sex whether motivated by hostility, by a desire to protect people of a certain gender, by gender stereotypes, or by the desire to accommodate other people's prejudices or discomfort."
- Like all non-discrimination provisions, these protections address conduct in the workplace, not personal beliefs. Thus, these protections do not require any employee to change beliefs. Rather, they seek to ensure appropriate workplace treatment so that all employees may perform their jobs free from discrimination.
- Further information from other federal government agencies includes: *A Guide to Restroom Access for Transgender Workers*, issued by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), <https://www.osha.gov/Publications/OSHA3795.pdf>, and *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace*, <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/>, issued by the U.S. Office of Personnel Management.
- If you believe you have been discriminated against, you may take action to protect your rights under Title VII by filing a complaint:
  - **Private sector and state/local government employees** may file a charge of discrimination by contacting the EEOC at 1-800-669-4000 or go to <https://www.eeoc.gov/employees/howtofile.cfm>.
  - **Federal government employees** may initiate the complaint process by contacting an EEO counselor at your agency; more information is available at [https://www.eeoc.gov/federal/fed\\_employees/complaint\\_overview.cfm](https://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm)