



# COMPLIANCE BULLETIN

## HIGHLIGHTS

- Title VII protects an employee's right to use the bathroom that he or she considers to be consistent with his or her gender identity.
- Employers cannot impose conditions on transgender employees to use bathrooms consistent with their gender identity.
- Employers cannot limit or require transgender employees to use single-use bathrooms at the workplace.

## LEGAL FRAMEWORK

- EEOC—*Macy v. Dep't of Justice* (discrimination based on transgender status violates Title VII), *Lusardi v. Dept. of the Army* (clarification of transgender discrimination).
- 4th Circuit Court of Appeals—*G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd* (schools must treat students consistent with their gender identity).
- OSHA—[A Guide for Restroom Access for Transgender Workers](#)
- OPM—[Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace](#)

## EEOC Rules on Transgender Employee Bathroom Use

### OVERVIEW

On May 2, 2016, the Equal Employment Opportunity Commission (EEOC) published [guidance](#) for employers regarding bathroom access rights for transgender employees.

In its guidance, the EEOC states that denying transgender employees the right to use the bathroom that corresponds with their gender identity is a violation of Title VII of the Civil Rights Act (Title VII). According to the EEOC, this guidance is consistent with prior guidance, as well as judicial decisions.

The EEOC is encouraging individuals who have been (or believe they have been) discriminated against because of their bathroom choices to contact the EEOC and [report](#) their claims.

### ACTION STEPS

- ✓ Employers should review their personnel policies to make sure they are in compliance with Title VII and this most recent EEOC [guidance](#).
- ✓ Employers should consider explaining to their employees the bathroom access rights for transgender individuals and all personnel under Title VII.

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## Title VII of the Civil Rights Act

Title VII prohibits employment discrimination based on race, color, national origin, religion or sex. The prohibition against sexual discrimination includes discrimination based on pregnancy, gender identity and sexual orientation, including **transgender** status.

“Transgender” refers to individuals whose gender identity or expression is different from their biological gender (the sex assigned to them at birth, listed on an original birth certificate). A person is not required to undergo any medical procedure to be considered a transgender man or woman.

Title VII applies to all public employers, and all private employers with **15 or more** employees. Because Title VII is federal law, it preempts state and local laws, and employers cannot shield themselves from violations under a claim that state or local laws allowed them to require employees to use a bathroom consistent with their biological gender.

## Protection of Transgender Status under Title VII

In 2012, the EEOC [ruled](#) that discrimination based on transgender status is sex discrimination under Title VII. In 2015, the EEOC expanded its view on transgender discrimination when it [held](#) that:

- ✓ Denying an employee equal access to a common restroom that corresponds to the employee’s gender identity is sex discrimination;
- ✓ An employer cannot require a transgender employee to undergo or provide proof of surgery or a medical procedure to allow the employee access to a bathroom that corresponds to the employee’s gender identity; and
- ✓ An employer cannot require or limit a transgender employee to use a single-use restroom instead of other restrooms commonly available to other employees (however, employers can make a single-use restroom available to all employees).

*“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.”*

In this most recent guidance, the EEOC explains that its guidance is consistent with other government decisions, policies and guidance regarding prohibited discrimination based on sex. Specifically, the EEOC cites the U. S. 4th District Court of Appeals, the U.S. Department of Education, the Occupational Safety and Health Administration (OSHA) and the U.S. Office of Personnel Management.

The EEOC also stated with this guidance that “gender-based stereotypes, perceptions or comfort level must not interfere with the ability of any employee to work free from discrimination, including harassment.” The EEOC also asserted that these nondiscrimination provisions address only conduct at the workplace and seek merely to ensure that all employees may perform their jobs free from discrimination. Because the guidance is limited to workplace conduct, it does not require any employee to change their beliefs, opinions or perceptions.