

Transgender Status In The Workplace – First An EEOC Issue And Now An OSHA Issue?

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Transgender status has been all over the news lately. As many of you saw on [20/20](#), Bruce Jenner publicly announced his gender transition to a woman in late April. We have also covered the various cases that have addressed transgender discrimination in lawsuits brought by the [EEOC](#) as well as [individuals](#) since late 2014. Most recently Saks & Company settled a [controversial transgender discrimination case](#) back in March. We are aware of EEOC's position on this issue – that gender identity discrimination is covered by Title VII based on discrimination on basis of failing to conform to a gender stereotype. This is despite the fact that Title VII does not explicitly list gender identity as a protected characteristic.

Now the Occupational Safety and Health Administration (OSHA) has decided to get in on the action by entering into an [agreement](#) with the National Center for Transgender Equality (NCTE) to "provide NCTE affiliates and others with information and resources to help foster safer and more healthful American workplaces." One of the primary focuses of the agreement is the question of restroom access for transgender workers. OSHA currently regulates the number of toilets that an employer must have based on the number and sex of the employees.

The unique question that arises in transgender cases is when is the transgender employee considered the opposite sex? Is it the day they announce their transition to the employer and dress as the opposite sex even though they have not had the gender reassignment surgery? OSHA has not issued any guidelines yet, but NCTE advocates that a transgender employee have the "right to use a restroom that corresponds to the employee's gender identity, regardless of the [employee's sex](#) assigned at birth." This can be a controversial issue as employees of both genders may have objections claiming sexual harassment by having a person who is biologically the opposite sex in their restroom.

Given the emphasis by the EEOC and now OSHA on the protection of transgender employee rights, employers are well-advised to review their policies and educate their managers and supervisors about this emerging and important issue. This could affect the general EEO Nondiscrimination policy, the company dress code, bathroom access as well as supervisory training for dealing with various gender transition issues.

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