

Employers Guide

Understanding Gender Identity & Expression in the Workplace

Are Your Policies and Procedures Regarding Gender Identity and Gender Expression Compliant?

A recent lawsuit regarding was brought on behalf of a transgender individual who sought employment at a company in Sacramento.

The company allegedly made an offer of employment on the condition that the applicant use the women's restroom and locker room pending completion of female to male sex reassignment surgery.

The case was settled and the company agreed to change their policies because the FEHA prohibits employers from requiring transgender workers to use restrooms and locker rooms based on their sex at birth.

California state law prohibits discrimination based on both gender identity and gender expression regardless of the person's assigned sex at birth.

California law additionally protects an employee's right to appear or dress regularly with his/her gender identity or gender expression.

The California Department of Fair Employment and Housing (DFEH) recently issued new guidance for employers with suggestions on how to comply with the law.

Their guidance makes the following guidance - recommendations:

- Employers should not ask questions designed to detect a person's sexual orientation or gender identity, such as marital status, about a person's body or whether they plan to have sex reassignment surgery or other procedures.
- Employers who do have a dress code should apply it consistently in a non-discriminatory manner. For example, a transgender person identifying as a woman **must be allowed to dress** in the same manner as non-transgender women and the employee's compliance with the policy cannot be judged more harshly than non-transgender women.
- All employees have the right to use a restroom or locker room that corresponds to the employee's gender identity — regardless of the employee's assigned sex at birth.
- To provide options for workers and enhance privacy for all employees, employers, where possible, should create single-user or unisex restroom facilities, but should never force a transgender employee to exclusively use that facility.
- Regardless of the underlying reason, a unisex or single stall bathroom can be used by any employee and the use of a unisex single stall restroom should always be a matter of choice.

The DFEH guidance notes that a transgender person does not need to have completed any particular transition in order to be protected by the law. An employer cannot condition its treatment or accommodation of a transitioning employee on completion of a particular step in the transition.

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