

Ask Lambda Legal

Our attorneys field your questions on the issues that matter to you most.



“GENDER POLICING” IS HARMFUL TO EVERYONE THAT DOESN’T CONFORM TO SOMEONE ELSE’S GENDER STANDARDS

Q I am the human resources manager for a mid-size corporation, where an employee has informed us that she will soon be transitioning from male to female. What bathroom should she use?

A A transgender person should use the restroom that corresponds to his or her gender identity. Any employer interested in setting a tone of fairness in the workplace needs to treat transgender employees with respect, and bathroom access is key. When an employee is unable to use the appropriate bathroom, it’s not just their comfort that’s at stake but their success at that particular job.

For starters, don’t assume that your employee must look a certain way to use a certain restroom. Such “gender policing” is harmful to everyone, whether a

transgender person, a butch woman, an effeminate man or anyone dressed or groomed in a way that doesn’t conform to someone else’s gender standards.

Also keep in mind that it’s irrelevant to the situation whether or not your employee has had sex reassignment surgery (SRS). That doesn’t tell you anything about gender identity or someone’s right to use a certain bathroom—and asking about it is a major invasion of privacy. It could also be illegal: If employers were to impose such a “genital standard” for bathroom use, they would need to inquire about the genitals of everyone in that workplace. Imagine the privacy concerns that would raise!

The U.S. Occupational Safety and Health Administration (OSHA) forbids employers from placing “unreasonable” restrictions on restroom access. Also, if an employer were to require someone

to use the wrong bathroom, they would be both violating an employee’s privacy by singling him or her out, and outing the person as transgender.

Your interest in accommodating your transitioning employee appropriately certainly suggests an interest not just in fairness but in good business practices. Employers are increasingly recognizing that they have an opportunity to ensure greater diversity in the workplace and attract the best and brightest for each job by adopting fair, transgender-inclusive policies. **L**



FOR MORE INFORMATION, check out our *Equal Access to Public Restrooms* fact sheet at lambdalegal.org/trans-toolkit

HISTORY

Public Restrooms Have Always Been a Civil Rights Battleground

Bathrooms have played a role in virtually every civil rights movement in the United States. Controlling the way people use restrooms—or are not allowed to use them at all—has been a tool for degrading people of color, excluding women from traditionally male jobs and keeping people with disabilities from accessing public accommodations and employment.

The public humiliation often involved makes it especially hard to confront bathroom discrimination and educate the general public. But the same basic principle holds true for transgender people and those who have confronted this issue before: Everyone deserves to be treated with respect and dignity, including while involved in such basic human activities as using a public restroom.

