

Municipal Human Resources Association

Transgender Issues in the Workplace

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- “Transgender is an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person’s internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics.”
- *American Psychological Association*

- How many people in the U.S. are considered transgendered?
 - 700,00
 - .2 -- .3 percent of population
 - But probably higher

• Are transgender employees covered by Title VII of the Civil Rights Act of 1964?

- Title VII bars discrimination based on sex, race, color, national origin, and religion
- Title VII *does not expressly* address discrimination based on sexual orientation or gender identity.

• **But:**

- EEOC takes the position that discrimination against an employee because of sexual orientation or gender identity *is* discrimination because of sex in violation of Title VII.

• The Fourth Circuit Court of Appeals (covers SC, NC, VA, WV, MD)

- *Murray v. N.C. Dept. of Pub. Safety*. Title VII does not protect against sexual orientation discrimination.
 - Consistent with other circuits, including 2d, 3d, 6th, 7th, 9th, and 10th

• *But* in *G.G. v. Gloucester County School Board*, the 4th Circuit Court of Appeals issued an opinion upholding the Dept. of Education's requirement that when schools receiving federal funds provide single sex restrooms, they must treat transgender student consistent with their gender identity.

- U.S. Supreme Ct. agreed on 10/28/16 to hear the case

• So, by July 2017, we should have clarification.

• *But:*

- The case involves school receiving federal funds.
 - If no federal funds
 - If not a public agency

• In South Carolina, Richland and Charleston counties, and the cities of Columbia and Charleston have passed ordinances protecting transgender employees.

- Applies only to their own employees.

Issues to Consider

- Policy
 - Include “gender identity or expression” as a protected category in policies.

- Get upper management on board, including City Council.

- Keep co-workers in mind
 - Some will be supportive; some offended
 - Employees are not required to believe in or accept transgenderism.
 - Employees are required to treat the transgender employee with respect and tolerance

• Employee communications

- Consider adding articles to your in-house publications.
- Consider adding links to websites that discuss the issue in neutral terms.

• Facilities – grant access to bathrooms and dressing rooms.

- Permit an employee to use sex-segregated facilities that correspond to his/her full-time gender presentation, regardless of what state that person is in terms of the transition process

• Dress Code –

- Make dress codes gender neutral and apply consistently.
- Consider adding a provision that workers may dress in accordance with their full-time gender presentation.



- **Benefits**
 - Cannot deny benefits on the basis of gender identity or expression. Spouses and children should be treated the same as the spouse and children of non-transgender employees
 - Consider adding medically necessary treatments and procedures in employer-provided healthcare and short-term disability coverage.






