Demystifying the Transgender Laws: How to Prevent Bathroom Battles from Becoming an Issue in Your Municipality

> Illinois Municipal League Attorneys' Session Thursday, September 22, 2016 – 3:15 p.m. Continental B & C

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What are we talking about, anyway?

• "Transgender" is the umbrella term that describes individuals whose gender given to them at birth does not match the gender that they truly feel that they are, regardless of whether they have had gender reassignment surgery.



Terms:

- "Assigned gender" the gender given to everyone at birth based on
- Gender identity or "affirmed" gender is a person's deeply held sense of their own gender (regardless of body parts)
 "Transgender female" is a person born male who identifies as female
- "Transgender male" is a person born female identifying as a male
- NOTE: Courts use the word "sex" and "gender" interchangeably, but distinguish "gender identity"



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Terms:

- "Transvestite" is a person who derives pleasure from dressing in the clothes of the opposite gender
- Reassignment surgery the surgical procedure that an individual undergoes to conform their body to their gender identity
- "Gender nonconforming" describes people whose gender expression differs from stereotypical societal expectations related to gender.

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Transition

- "Transition" is the time when a person begins to live as the gender with which they identify instead of the gender with which they were born.
- Generally begins with a diagnosis of gender dysphoria
- First step is a court-ordered name change
- To change the gender marker on your IL driver's license,
 - either a certified copy of your amended birth certificate or
 - a letter or affidavit from your physician certifying that you have taken or are taking appropriate clinical steps to change your gender.

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Laws on Transgender Rights

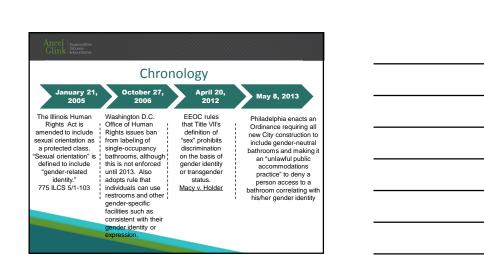
Local laws
State and federal legislation
Governmental edicts
Court guidance

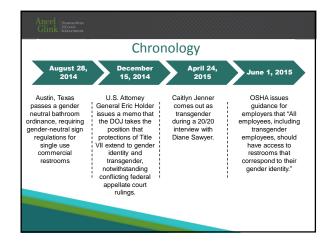
A Boy's Life

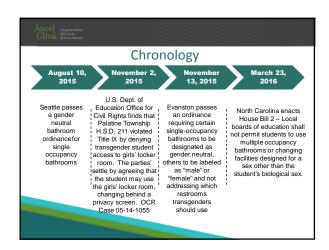




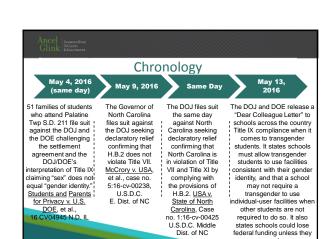
Chronology of Significant Transgender Events 1993-2002 1984 1989 2004 7th Circuit finds a transsexual pilot is not entitled to Title VII sex discrimination protection, interpreting sex discrimination as "against women because they are women and men because they are men." "The work of Title VII do not outlaw discrimination." U.S. Supreme Court In Smith v. Salem, the 6th Circuit holds that rules in Price not interpret the Waterhouse v. Hopkins that Title VII grants relief to a holding of Price Waterhouse as applying to Title VII's definition of "sex" extends to transgenders, and transgenders. grants a transsexual firefighter protection. This is the first federal (non transgender) woman who is treated differently because she is "too (E.D.Pa. 1993. D. Kansas 1995 E.D. La. 2002) appellate ruling applying Title VII in this manner. "The words of Title VII do not outlaw discrimination against a person who has a sexual identity disorder." Ulane v. Eastern Airlines, Inc., 742 F.2d 1081 masculine" and brash. 490 U.S. 228



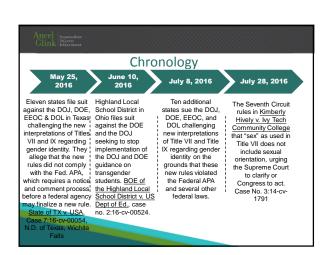




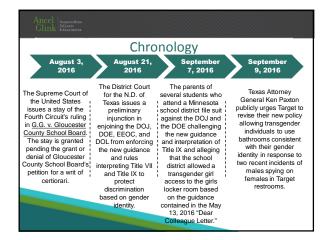
	Chro	nology	
April 11, 2016	April 18, 2016	April 19, 2016	May 4, 2016
The City of Highland Park passes an ordinance requiring single-occupancy restrooms in all new developments within the City be designated as gender neutral.	Target announces that transgenders can use the store's bathrooms that match their gender identity.	The U.S. Court of Appeals for the Fourth Circuit rules in the case of G.G. v. Gloucester County School Board that the Gloucester County School Board violated Title IX by denying a transgender boy access to the boys' restrooms.	The DOJ writes to the Governor of North Carolina informing him that H.B.2 violates Title VII and demands that the Governor remedy the violations by no longer implementing H.B.2.

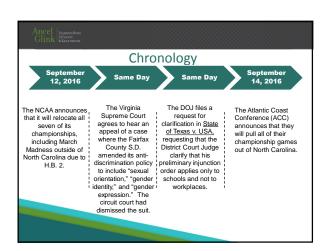


comply.









Where does this leave us???? Conflicting laws, court opinions and agency direction The real legal issues involve states' rights + agency rulemaking High emotions on all sides Events are occurring almost daily Congress has not acted to amend Title VII or Title XI to include gender identity





Let's chat about body parts

Body parts + multi-stall bathrooms:

Gender reassignment surgery = who cares?

Male parts on transgender female + ladies' room

= inside stall

Female parts + transgender male + men's room

= inside stall

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What is everybody afraid of?

- Haters gonna hate
- Deeply held gender identity beliefs v. deeply held privacy or religious beliefs
- Many instances of non-transgenders abusing transgender-friendly laws to gain access to facilities for perverted reasons



What is everybody afraid of? • A few instances of transgenders doing the same • Fear of the unknown

Municipal issues

- Labeling of bathrooms
- Locker rooms
 - Police
 - Fire
 - Parks Departments
- · Parks programs

"The End of Girls' Sports...

• Her dreams of a scholarship shattered, your 14year-old daughter just lost her position on an allgirl team to a male, and now she may have to shower with him."

a full page newspaper ad placed by the Minnesota Child Protection League after the Minnesota Stote High School League voted to allow transgender student athletes to play on the team with which they identify

How to Comply With Transgender **Protections**

- Workplace employees



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Best practices

- Have a policy before it becomes a problem
- Have a policy for employees and a policy for patrons

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Workplace

- EEOC advises implement a policy against discrimination
- Policy should address the following issues:
 - Terminology
 - Prohibition on discrimination

Workplace

- Who to complain to about violations
- Rights of transgender individuals in the workplace
 - Privacy rights
 - Name to be used Be careful of pronouns

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Workplace

- Employee responsibilities to respect
- Employer responsibilities to enforce
- Responsibilities of transitioning employees
- Dress code
- Complaints by co-workers
- Transgender employees
- Educate, educate, educate!

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For Patrons It's a Bit More Complicated

- EEOC and DOJ advise to have a policy which prohibits discrimination and addresses the following:
 - Restrooms ideally gender neutral otherwise according to gender identity
 - Locker rooms according to gender identity but private area for transgender and other individuals who do not want to change in a group setting

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For Patrons It's a Bit More Complicated

 The best practice is to accommodate those who feel uncomfortable, whether or not they are transgender themselves

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What about gender specific programs, especially sports?

- More complicated
- This needs to be addressed on a case by case basis, considering the following factors:
 - age of the participant
 - sport or program
 - gender identified on legal documents

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Other Supporting Information

- Physician statement (including psychiatric reports)
- Court ordered change of name
- Requirements of sponsoring organization (most require some confirming documentation)
- Whether the minor is pre or post pubescent
- Current medical treatments

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Your To Do List

- Be aware of the developing trends and law on transgender rights
- Adopt policies for employees/patrons/participants

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More To Do List • Create gender neutral bathrooms and private areas in locker rooms • Train employees

Collective bargaining obligations Remember that these issue may have collective bargaining implications



Question 1 • Transgender rights only apply to individuals who have undergone reassignment surgery. Answer 1 False! One aspect in the demystification of transgender individuals and rights is understanding what it means to be transgender. The word transgender is an umbrella term for people who identify with the gender that does not conform to the one assigned to them at birth. This may mean that a transgender person has undergone or is undergoing gender reassignment surgery, or it may mean that a person is simply living as the gender with which they identify without surgical reassignment.

Question 2

majority comes first.

• If most co-workers are uncomfortable with a transgender co-worker, the comfort of the

Answer 2 In fact, the opposite is true. Who uses which bathroom, for instance, is currently a huge topic of debate in some places. OSHA and EEOC have issued guidelines on the subject of bathrooms (as has President Obama to schools) which clearly state that while gender neutral, single bathrooms are best, if an individual complains about a transgender person's use of the bathroom that they use, it is the one who complains who should be offered an alternative facility – not the transgender individual. Question 3 • A public body can comply with the law if it provides a separate facility to the transgender individual. Answer 3 • Perhaps, if there is an agreement with the parties about this. Be careful in making something like a privacy screen in a locker room a mandatory requirement.

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	Question 4			
	Transgender employees must use their legal			
	name at work.			
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	Answer 4			
	 It is true that employers must report earnings to the IRS and Social Security Administration under an employee's legal name, even if that name does not conform to the employee's gender identity, but a transgender employee must be allowed to use at work any name they have chosen to match their gender identity. Repeated or 			
	they have chosen to match their gender identity. Repeated or malicious use of a name or pronoun which does not match an employee's preferred name may be considered harassment under the law.			
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	Question 5			
	Employers do not have to have a separate			
	policy for transgender issues.			
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	Answer 5		
	 While this might be technically true, the best practice is to establish a policy or procedures for addressing transgender issues in the workplace. First of all, a solid policy and 		
	procedures will aid in defense of any claims of discrimination. Secondly, these issues are still new and unfamiliar to many in the workforce. Policies, procedures and training demystify many questions that people ask		
	about transgender rights in the workplace.		
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	Question 6		
	 If a member of public asks about the gender of a patron or participant, what should you 		
	do?		
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	Answer 6		
	 Patron and program participant information, like that of employees is private. It is no more appropriate for someone to ask about a person's gender assignment or identity than it is to ask about their 		
	marital status, their home address or their social security number. If ever asked this question or one similar to it, simply respond that the Village does not release any private information about participants or patrons but if they have any concerns about		
	programs or services, you would be happy to assist them.	-	

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	Question 7		
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	 A parent wants to register a minor in girls' soccer. As proof of age eligibility, the parent 		
	produces a birth certificate that reflects that the child was assigned the male gender at		
	birth. Now what?		
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	Answer 7		
	 This requires a case by case analysis. Generally, participants should be allowed to 		
	register consistent with their gender identity but even the DOJ and DOE acknowledge		
	exceptions.		
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	Question 8	-	
	 Our parks department offers a summer camp and we just learned that we are going to have 		
	a transgender camper. What should we do?		

Question 10

 You strongly suspect that a patron is pretending to be transgender as a joke or to mock those that really are or to have access to gender specific areas for criminal motive. How do you handle this?

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Answer 10

 This is the biggest fear of all with concerns about misuse of transgender rights. Any good faith suspicion that someone is pretending to be transgender for any of these reasons should be handled like any other misconduct by employees, patrons or participants.

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Question 11

 When transgender participants are using the facility that corresponds to their gender identity, what do we do about open spaces such as changing areas?



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Answer 11

 The transgender person has the right to be in the locker room. If they are comfortable changing in the open, then that's where they should change. If anyone is uncomfortable with this, then they will need to be accommodated.

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Question 12

 What if a parent, participant or patron has a bona fide religious belief which does not agree with our gender identity policy?



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Answer 12

• The idea is to accept people as they are. Bona fide religious beliefs should be accommodated by providing an alternative restroom or locker room for that person.

