

YOUFIT NON- DISCRIMINATION POLICY

OUR POLICY

Youfit prohibits all types of discrimination and harassment of its employees, vendors, members, and/or guests based on any of the following: race, color, religion, creed, sex, gender, gender identity, sexual orientation, national origin, age, disability, marital status, citizenship, genetic status, status as a covered veteran or military personnel, or any other status protected by law. Employees must use mature judgment and maintain the highest standards of performance and ethical conduct at all times. Any employee or member of management who engages in such discriminatory conduct is subject to disciplinary action up to and including termination.

EQUAL TREATMENT

The touchstone for this policy is equal treatment. No guest or member should be treated differently than another based on a status listed above. In most cases, high standards of personal conduct and ethical company policies make this decision-making simple; however, in some special cases, specific guidance is needed. Please see below for specific anti-discrimination policies pertaining to employees, vendors, members, and guests.

RELIGION AND EXPRESSION OF RELIGIOUS BELIEFS

No employee, vendor, member, and/or guest will be prohibited from physically expressing their private religious beliefs, provided that that expression does not interfere with basic safety guidelines and policies. This is consistent with our policy of non-discrimination for religion/creed and/or religious expression.

Religion expression is a right protected by law. The expression of religion may include religious garb and/or grooming practices, such as head coverings, specific clothing types, hairstyles, etc. Many times, these are traditions that have solidified and unified cultures over hundreds or even thousands of years. As long as an expression of religion does not interfere with the rights of any other employee or member, and it adheres to our safety standards and policies, it shall be protected.

TRANSGENDER INDIVIDUALS' USE OF BATHROOMS AND LOCKER ROOMS

Transgender employees, guests, and members of Youfit should be allowed to use the bathroom and/or locker room for the sex with which they identify, without being harassed or questioned. This is the facility that would be appropriate for a non-transgender individual with the same gender identity and expression as the transgender individual, regardless of the individual's birth sex. This is consistent with our policy of non-discrimination for gender and/or gender identity.

Safe use of public bathrooms and locker rooms is essential for any individual- especially transgender people, who can face unique challenges and harassment. Transgender people are individuals who have a persistent and deeply held identification with a gender that is different from that which they were assigned at birth. Like everyone else, transgender individuals deserve to use bathrooms and locker room facilities with assurances for their safety and dignity. In addition, many states have laws which prohibit discrimination against transgender individuals. Please see the attached "Best Practices" guide from OSHA (the Occupational Safety and Health Administration," where the same policy is advocated.

If any individual is uncomfortable with our policy they are welcome to utilize unisex or handicap restrooms should they be available. Please note, though, that no individual can be forced to use a segregated facility because of their gender identity.

III. HANDLING ISSUES

Again, our goal is equal treatment. If a member or guest has a problem with how they or another member/guest are being treated, the employee should report the issue to a manager on duty. The member should be made aware of our non-harassment policy; a simple statement, example below, is appropriate:

“Youfit prohibits all types of discrimination and harassment. We strive for equal treatment.”

An important, more detailed explanation of this policy may be applicable in some cases. Some members might have problems with how another member or employee is being treated (ie- they are unhappy that another member or employee is allowed to wear a headscarf, or use a specific gender bathroom). In this situation, a manager who is well-versed in our policy should explain to the member that while they are a valued Youfit customer, so is every other Youfit member. As long as we are not interfering with their basic rights, we are following our policy of non-discrimination.

It should also be understood that none of these policies permit any individual to behave inappropriately, harass others, discriminate against others, or violate Youfit policy.

Examples of issues that can arise in regards to this policy:

Members wearing certain religious clothing that could pose a safety threat should be treated in accordance with our safety standards and policies. If a member is using a piece of equipment in an unsafe way, it is our policy to correct them. If they cannot use it safely, they should refrain from doing so. This could include a long, flowing garment on a cardio machine. The member needs to be made aware of the risks that it poses, and if they fail to address the issue, they are not permitted to continue using the equipment. They are not barred from using the gym, however, as there are other activities they could participate in that would pose no such threat (free weights, stretching). Additionally, many other expressions of religion (for example, yamakas, headscarves) are completely non-issues; they neither interfere with individual rights nor pose a safety risk.

A transgender individual using the restroom or locker room of the gender that they identify with may unsettle some other members. However, again, our goal is equal treatment. Non-transgender individuals appropriately are not asked for proof of their gender or information relating to their medical history before they are allowed to use our locker rooms; neither should transgender individuals be asked for such information. An alternative that would require either anatomical checks or proof of medical history would be insulting, invasive, and would violate the person’s right to privacy, particularly with regard to personal medical information. Additionally, it violates certain state laws and the best practices advocated by the federal government.



Best Practices

A Guide to Restroom Access for Transgender Workers

Core principle: All employees, including transgender employees, should have access to restrooms that correspond to their gender identity.

Introduction

The Department of Labor’s (DOL) Occupational Safety and Health Administration (OSHA) requires that all employers under its jurisdiction provide employees with sanitary and available toilet facilities, so that employees will not suffer the adverse health effects that can result if toilets are not available when employees need them. This publication provides guidance to employers on best practices regarding restroom access for transgender workers. OSHA’s goal is to assure that employers provide a safe and healthy working environment for *all* employees.

Understanding Gender Identity

In many workplaces, separate restroom and other facilities are provided for men and women. In some cases, questions can arise in the workplace about which facilities certain employees should use. According to the Williams Institute at the University of California-Los Angeles, an estimated 700,000 adults in the United States are *transgender*—meaning their internal *gender identity* is different from the sex they were assigned at birth (e.g., the sex listed on their birth certificate). For example, a *transgender man* may have been assigned female at birth and raised as a girl, but identify as a man. Many transgender people *transition* to live their everyday life as the gender they identify with. Thus, a transgender man may transition from living as a woman to living as a man. Similarly, a *transgender woman* may be assigned male at birth, but transition to living as a woman consistent with her gender identity. Transitioning is a different process for

everyone—it may involve social changes (such as going by a new first name), medical steps, and changing identification documents.

Why Restroom Access Is a Health and Safety Matter

Gender identity is an intrinsic part of each person’s identity and everyday life. Accordingly, authorities on gender issues counsel that it is essential for employees to be able to work in a manner consistent with how they live the rest of their daily lives, based on their gender identity. Restricting employees to using only restrooms that are not consistent with their gender identity, or segregating them from other workers by requiring them to use gender-neutral or other specific restrooms, singles those employees out and may make them fear for their physical safety. Bathroom restrictions can result in employees avoiding using restrooms entirely while at work, which can lead to potentially serious physical injury or illness.

OSHA’s Sanitation Standard

Under OSHA’s *Sanitation standard* (1910.141), employers are required to provide their employees with toilet facilities. This standard is intended to protect employees from the health effects created when toilets are not available. Such adverse effects include urinary tract infections and bowel and bladder problems. OSHA has consistently interpreted this standard to require employers to allow employees prompt access to sanitary facilities. Further, employers may not impose unreasonable restrictions on employee use of toilet facilities.

Model Practices for Restroom Access for Transgender Employees

Many companies have implemented written policies to ensure that *all* employees—including transgender employees—have prompt access to appropriate sanitary facilities. The core belief underlying these policies is that all employees should be permitted to use the facilities that correspond with their gender identity. For example, a person who identifies as a man should be permitted to use men’s restrooms, and a person who identifies as a woman should be permitted to use women’s restrooms. The employee should determine the most appropriate and safest option for him- or herself.

The best policies also provide additional options, which employees may choose, but are not required, to use. These include:

- Single-occupancy gender-neutral (unisex) facilities; and
- Use of multiple-occupant, gender-neutral restroom facilities with lockable single occupant stalls.

Regardless of the physical layout of a worksite, all employers need to find solutions that are safe and convenient and respect transgender employees.

Under these best practices, employees are not asked to provide any medical or legal documentation of their gender identity in order to have access to gender-appropriate facilities. In addition, no employee should be required to use a segregated facility apart from other employees because of their gender identity or transgender status. Under OSHA standards, employees generally may not be limited to using facilities that are an unreasonable distance or travel time from the employee’s worksite.

Other Federal, State and Local Laws

Employers should be aware of specific laws, rules, or regulations regarding restroom access in their states and/or municipalities, as well as the potential application of federal anti-discrimination laws.

The Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), DOL, and several other federal agencies, following

several court rulings, have interpreted prohibitions on sex discrimination, including those contained in Title VII of the *Civil Rights Act of 1964*, to prohibit employment discrimination based on gender identity or transgender status. In April 2015, the DOL’s Office of Federal Contract Compliance Programs (OFCCP) announced it would require federal contractors subject to Executive Order 11246, as amended, which prohibits discrimination based on both sex and gender identity, to allow transgender employees to use the restrooms and other facilities consistent with their gender identity. Also in April 2015, the EEOC ruled that a transgender employee cannot be denied access to the common restrooms used by other employees of the same gender identity, regardless of whether that employee has had any medical procedure or whether other employees’ may have negative reactions to allowing the employee to do so. The EEOC held that such a denial of access constituted direct evidence of sex discrimination under Title VII.

The following is a sample of state and local legal provisions, all reaffirming the core principle that employees should be allowed to use the restrooms that correspond to their gender identity.

Colorado: Rule 81.9 of the Colorado regulations requires that employers permit their employees to use restrooms appropriate to their gender identity rather than their assigned gender at birth without being harassed or questioned. 3 CCR 708-1-81.9 (revised December 15, 2014), available at <http://cdn.colorado.gov/cs/Satellite/DORA-DCR/CBON/DORA/1251629367483>.

For more information refer to: “Sexual Orientation & Transgender Status Discrimination—Employment, Housing & Public Accommodations,” Colorado Civil Rights Division, available at: <http://cdn.colorado.gov/cs/Satellite/DORA-DCR/CBON/DORA/1251631542607>.

Delaware: Guidance from the Delaware Department of Human Resource Management provides Delaware state employees with access to restrooms that correspond to their gender identity. The guidance was issued pursuant to the state’s gender identity nondiscrimination law.

Delaware’s policy also suggests: Whenever practical, a single stall or gender-neutral restroom may be provided, which all employees may utilize.

However, a transgender employee will not be compelled to use only a specific restroom unless all other co-workers of the same gender identity are compelled to use only that same restroom.

For more information refer to: State of Delaware Guidelines on Equal Employment Opportunity and Affirmative Action Gender Identity, available at: <http://www.delawarepersonnel.com/policies/documents/sod-eeoc-guide.pdf>.

District of Columbia: Rule 4-802 of the D.C. Municipal Regulations prohibits discriminatory practices in regard to restroom access. Individuals have the right to use facilities consistent with their gender identity. In addition, single-stall restrooms must have gender-neutral signage. D.C. Municipal Regulations 4-802, "Restrooms and Other Gender Specific Facilities," available at: <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=4-802>.

Iowa: The Iowa Civil Rights Commission requires that employers allow employees access to restrooms in accordance with their gender identity, rather than their assigned sex at birth.

For more information refer to: "Sexual Orientation & Gender Identity – An Employer's Guide to Iowa Law Compliance," Iowa Civil Rights Commission, available at: https://icrc.iowa.gov/sites/files/civil_rights/publications/2012/SOGIEmpl.pdf.

Vermont: The Vermont Human Rights Commission requires that employers permit employees to access bathrooms in accordance with their gender identity.

For more information refer to: "Sex, Sexual Orientation, and Gender Identity: A Guide to Vermont's Anti-Discrimination Law for Employers and Employees," Vermont Human Rights Commission, available at: <http://hrc.vermont.gov/sites/hrc/files/pdfs/other%20reports/trans%20employment%20brochure%207-13-12.pdf>.

Washington: The Washington State Human Rights Commission requires employers that maintain gender-specific restrooms to permit transgender employees to use the restroom that

is consistent with their gender identity. Where single occupancy restrooms are available, the Commission recommends that they be designated as "gender neutral."

For more information refer to: "Guide to Sexual Orientation and Gender Identity and the Washington State Law Against Discrimination," available at: <http://www.hum.wa.gov/Documents/Guidance/GuideSO20140703.pdf>.

Additional Information

- American Psychological Association. Answers to your questions about transgender people, gender identity and gender expression, 2011: <http://www.apa.org/topics/lgbt/transgender.aspx>.
- Transgender Law Center's model employer policy, with an extensive section on restrooms, can be found at: <http://transgenderlawcenter.org/wp-content/uploads/2013/12/model-workplace-employment-policy-Updated.pdf>.
- "Restroom Access for Transgender Employees" on Human Rights Campaign website: <http://www.hrc.org/resources/entry/restroom-access-for-transgender-employees>.
- National Gay and Lesbian Task Force and the National Center for Transgender Equality. National Transgender Discrimination Survey, 2011: <http://endtransdiscrimination.org/report.html>.

How OSHA Can Help

OSHA has a great deal of information to assist employers in complying with their responsibilities under the law. Information on OSHA requirements and additional health and safety information, including information on OSHA's Sanitation standard, is available on the agency's website (www.osha.gov).

Workers have a right to a safe workplace (www.osha.gov/workers.html#2). The law requires employers to provide their employees with working conditions that are free of known dangers. An employer's duty to provide a safe workplace includes the duty to provide employees with toilet facilities that are sanitary and available, so that employees can use them when they need to do so. Employers also have a duty to protect all

their employees, regardless of whether they are transgender, from any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. For more information on workplace violence, please see OSHA's website at: www.osha.gov/SLTC/workplaceviolence.

Workers who believe that they have been exposed to a hazard or who just have a question should contact OSHA. For example, workers may file a complaint to have OSHA inspect their workplace if they believe that their workplace is unsafe or that their employer is not following OSHA standards. Just contact OSHA at: 1-800-321-OSHA (6742), or visit www.osha.gov. Complaints that are signed by an employee are more likely to result in an on-site inspection. It's confidential. We can help.

The *Occupational Safety and Health Act* (OSH Act) prohibits employers from retaliating against their employees for exercising their rights under the OSH Act. These rights include raising a workplace health and safety concern with the employer, reporting an injury or illness, filing an OSHA complaint, and participating in an inspection or talking to an inspector. If workers have been retaliated against for exercising their rights, they must file a complaint with OSHA within 30 days of the alleged adverse action. For more information, please visit www.whistleblowers.gov.

OSHA can also help answer questions or concerns from employers. To reach your closest OSHA regional or area office, go to OSHA's Regional and Area Offices webpage (www.osha.gov/html/RAmap.html) or call 1-800-321-OSHA (6742). OSHA also provides free, confidential on-site assistance and advice to small and medium-sized employers in all states across

the country, with priority given to high-hazard worksites. On-site Consultation services are separate from enforcement activities and do not result in penalties or citations. To contact OSHA's free consultation program, or for additional compliance assistance, call OSHA at 1-800-321-OSHA (6742).

References:

Department of Labor, Office of Federal Contract Compliance Programs, 2015. "Frequently Asked Questions EO 13672 Final Rule", available at: http://www.dol.gov/ofccp/lgbt/lgbt_faqs.html#Q35.

National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011 at 56 (noting that only 22% of transgender people have been denied access to gender-appropriate restrooms), available at: <http://endtransdiscrimination.org/report.html>.

Gates, Gary J., How many people are lesbian, gay, bisexual, and transgender? Williams Institute, UCLA School of Law, 2011. Retrieved 5/18/2015 from: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011 at 56 (noting that only 22% of transgender people have been denied access to gender-appropriate restrooms), available at: <http://endtransdiscrimination.org/report.html>.

Lusardi v. McHugh, EEOC Appeal No. 0120133395 (Apr. 1, 2015), available at: <http://transgenderlawcenter.org/wp-content/uploads/2015/04/EEOC-Lusardi-Decision.pdf>.

Macy v. Holder, EEOC Appeal No. 0120120821 (2012); Attorney General Memorandum, Treatment of Transgender Employment Discrimination Claims (Dec. 15, 2015). Retrieved 5/18/2015 from: http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf.

Memorandum to Regional Administrators and State Designees of the Occupational Safety and Health Administration on the Interpretation of 29 CFR 1910.141(c) (1)(i): Toilet Facilities (Apr. 6, 1998), available at: www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22932.

Disclaimer: This document is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The *Occupational Safety and Health Act* requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.



U.S. Department of Labor



Occupational Safety
and Health Administration