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THE LEADER IN MUNICIPAL LAW
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Gender Identity Law to Take Effect July 1, 2012

Several laws were enacted just before the Thanksgiving break of which you should be aware. One of these, Chapter 199 of the Acts of 2011, was signed into law on November 23, 2011 and is entitled an “Act Relative to Gender Identity.” This legislation amends several state laws so as to provide certain protections for transgender individuals, and was commonly referred to by critics as the transgender “bathroom bill.” The act takes effect July 1, 2012.

Of most significance to municipalities, the act adds “gender identity” to several statutes that prohibit discrimination against individuals based upon a person’s membership in various protected categories, such as age, gender, disability, and religion. Thus, a municipality or other public entity may not discriminate against a person on the basis of gender identity with respect to matters including employment, housing, and attendance at public schools (including charter schools and with respect to school choice). The definition of hate crimes has also been amended to include reference to gender identity. The legislation will likely pose challenges for municipalities, in that a person’s “gender identity” is hard to define. The statutory definition is as follows, “a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth.” A person need only have a “sincerely held” belief, as part of that “person’s core identity,” that he or she is transgendered, in order to be protected against discrimination.

This legislation will mainly impact municipalities in the following areas:

- in employment: when making employment decisions, someone’s “gender identity” cannot be considered.
- in education: students may not be discriminated against on the basis of their “gender identity,” such as with respect to attendance/admissions decisions.
- in housing: again, someone’s “gender identity” cannot be considered when making decisions such as might be made by a housing authority with respect to the rental of units, for example.
- in law enforcement: “gender identity” has been added to the definition of “hate crime” under G.L. c. 22C, §32, as well as to the definition of assault and battery

with intent to intimidate under G.L. c. 265, §39.

Importantly, despite the colloquial reference to the “bathroom bill,” the legislation signed by the Governor does not include amendments to G.L. c. 272, §§ 92A, and 98, which statutes prohibit discrimination in places of public accommodation. Although prior versions of the legislation included these statutes among those to be amended, the final version does not. It is likely that this was part of a compromise made to secure passage of the bill, since a main criticism of the legislation was that it would potentially require all places of public accommodation to make their bathrooms, restrooms, locker rooms, and the like, available to any individual without restriction as to gender. The lack of any amendment to the public accommodations statutes means that, for now, gender-specific facilities remain permissible. For that reason, municipalities and other public entities need not make any changes at this time with respect to gender-specific bathrooms, restrooms, locker rooms, etc.

We will be sending you information on other recently enacted legislation affecting labor and employment issues including pension reform and so-called “evergreen clauses” in collective bargaining agreements. In the meantime, if you would like more information, or if we can answer any further questions, please contact [Michele E. Randazzo](#) at 617-556-0007 or toll-free at 800-548-3522.

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