

## Legislative Update – An Act Relative to Transgender Anti-Discrimination

There has been significant media coverage concerning “An Act relative to Transgender Anti-discrimination” (the “Act”), which law was signed by the Governor on July 8, 2016 and generally takes effect October 1, 2016. The Act extends to places of public accommodations the protections for transgender individuals provided by the November, 2011 “Act Relative to Gender Identity” concerning public employment, housing, education, and treatment by law enforcement. For your information and convenience, click [here](#) for the 2011 eUpdate we sent about the earlier legislation.

The Act prohibits discrimination in places of public accommodation based upon gender identity. A person’s “gender identity” is defined by state law, G.L. c.4, §7(59) as, “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 place of “public accommodation” is also defined by state law, G.L. c.272, §92A, as, “any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public....” The statute provides further that such places include, but are not limited to: public transportation services, terminals and facilities; boardwalks and public streets; public libraries, museums and planetariums; places of public amusement, recreation, sports, exercise or entertainment; and, auditoriums, theatres, musical halls, and meeting places. While there are few court cases construing what particular municipal facilities constitute places of “public accommodation” for purposes of the law, the courts seem inclined to treat municipal facilities and properties as places of public accommodation where they are open to the general public and fit within one of the specific categories of places listed in G.L. c.272, §92A.

The Act further directs the Massachusetts Commission Against Discrimination to provide guidance, through the adoption of regulations or otherwise, concerning enforcement of the law. The Act also includes a much debated requirement that the Attorney General promulgate regulations or guidance as to the appropriate manner for taking legal action if a person asserts gender identity for an improper purpose.

Importantly, the new Act makes clear that any place of public accommodation that “segregates or separates access to such place of public accommodation, or a portion of such place” based upon a person’s gender must allow access based upon a person’s gender identity. For example, under the Act, transgender individuals must be allowed to use gender-specific locker rooms and bathroom facilities corresponding to their gender identity, rather than their anatomical sex. Following the November, 2011 law, some cities and towns reviewed their policies in the employment context with respect to single-sex bathroom and locker facilities. It is important for municipalities to review existing policies applicable to facilities open to public use to ensure that access by

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transgender individuals to gender-specific locker rooms, changing areas, and bathroom facilities is not inappropriately limited. Aside from allowing transgender individuals to use the bathroom/locker room/changing facilities corresponding to their gender identity, consideration may be given to the following types of changes:

- Conversion of single-sex facilities to “gender neutral” facilities, including changes to signage
- Installation of privacy dividers and/or extending restroom stall doors and walls from floor to ceiling
- Converting multiple-occupant, gender specific facilities to single-occupant, gender neutral facilities.

Municipal employees that deal with the public in places of public accommodation must also be familiar with the Act’s requirements in order to avoid inadvertent violations of the prohibition against gender identity discrimination.

This is a rapidly evolving area of the law, and we will continue to keep you informed of new developments. In the meantime, if we can answer any further questions or you would like to schedule a training, please contact Michele E. Randazzo ([mrando@k-plaw.com](mailto:mrando@k-plaw.com)) or at 617-556-0007.

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