



For your information

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Massachusetts Gender Identity Law Takes Effect on July 1

On November 23, 2011, Massachusetts Governor Deval Patrick signed House Bill 3810, An Act Relative To Gender Identity, into law. The new law, which protects transgender individuals from discrimination in employment, housing, education, and credit, takes effect on July 1, 2012.

Background

[Chapter 151B](#) of the Massachusetts General Laws (the Massachusetts Fair Employment Practices Act) makes it an unlawful employment practice for an “employer” to refuse to hire or employ, to discharge, or to discriminate against any individual with respect to compensation or the terms, conditions, and privileges of employment because of the individual’s sex or sexual orientation, unless based on a bona fide occupational qualification.

Generally, the term “employer” includes any employer with six or more employees, the Commonwealth of Massachusetts, and all of its political subdivisions, boards, departments, and commissions. However, special rules apply to religious institutions and organizations they operate, which allow certain hiring and employment preferences and other employment actions to promote their religious principles. Earlier this year, the Supreme Court recognized a similar exception to federal employment discrimination laws. (See our January 17, 2012 [For Your Information](#).)

Title VII of the Civil Rights Act of 1964 (Title VII), which is enforced by the Equal Employment Opportunity Commission (EEOC), generally prohibits employment discrimination on the basis of sex by employers with 15 employees or more. Until very recently, the EEOC did not recognize Title VII claims based on gender identity, sex change, and/or transgender status. On April 20, 2012, the EEOC reversed its long-held position, extending Title VII protections to the transgender community. (See our May 11, 2012 [For Your Information](#).)

The Gender Identity Law

On November 23, 2011, Massachusetts Governor Deval Patrick signed into law [An Act Relative To Gender Identity](#) (House Bill [3810](#)), which protects transgender individuals from discrimination in employment, housing, education, and credit. The new law makes gender identity a protected category

and transgender individuals a protected class under Massachusetts antidiscrimination laws (including the Massachusetts Fair Employment Practices Act). The law goes into effect on July 1, 2012.

INSIGHT

Although the Massachusetts antidiscrimination statute does not currently refer to gender identity or gender expression, the Massachusetts Commission Against Discrimination already allows transgender individuals to file sex discrimination complaints based on transgender status.

The new law broadly defines “gender identity” 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.” Evidence of gender-related identity may include, among other things:

- Medical history, care, or treatment of the gender-related identity
- Consistent and uniform assertion of the gender-related identity (unless asserted for an improper purpose)
- Other evidence that the gender-related identity is sincerely held as a part of a person's core identity.

Notably, the law does not limit its protections to individuals who have undergone or are undergoing sex reassignment surgery. Thus, employees will not have to provide medical proof of their gender identity. Unless an individual’s gender identity is obvious or the individual self-identifies, employers will be left to make case-by-case determinations of whether an individual’s identity, appearance, or behavior is gender-related.

The law also does not address certain practical implications, such as whether employers may require employees to use gender-specific rest rooms, locker rooms or other facilities used by members of their biological sex or whether an employer should allow access on the basis of gender identity. Fifteen other states, the District of Columbia, and a number of cities (including Boston, Massachusetts) already have laws in effect that prohibit discrimination on the basis of gender identity and gender expression. Employers may look to these other authorities for guidance on addressing these sensitive issues.

COMPLIANCE ALERT: As of July 1, 2012, transgender status will be a protected category under Massachusetts law. Because this change creates equal protections for transgender employees and job applicants, employers must ensure that they have appropriate equal opportunity, nondiscrimination, and anti-harassment policies and practices in place.

Conclusion

Massachusetts soon will bar employment discrimination on the basis of gender identity and expression, and provide wider protections for the transgender community. Because the new law will affect employers with as few as six employees and an estimated 33,000 transgender residents of Massachusetts, employers are likely to see an increase in discrimination claims based on transgender status or gender nonconformity and in enforcement activity.

Buck Can Help

- Evaluate the impact of this new law on your employment policies and practices
- Review EEO, nondiscrimination, anti-harassment, and privacy policies
- Modify dress codes and other appearance-related standards
- Train and educate managers and supervisors on applicable antidiscrimination laws

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.
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