



THE BATHROOM BILL: WHAT EVERY MASSACHUSETTS COMPANY NEEDS TO KNOW

As of October 1, 2016, transgender individuals will have the right to use the bathroom or locker room of their choice in Massachusetts. This summer, the Governor signed into law An Act Relative to Transgender Anti-Discrimination (the "Act"), adding gender identity in the list of protected classes covered by Massachusetts anti-discrimination laws. The Massachusetts Commission Against Discrimination and the Attorney General's Office ("AGO") have separately issued guidance to assist businesses in understanding and complying with their obligations and, when needed, dealing with those who claim gender identity for an "improper purpose."

"Effective October 1, 2016, businesses must allow transgender people to use the facility most consistent with their gender identity."

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Matt Kane

published an article in the September 19th issue of *Massachusetts Lawyers Weekly* entitled, "For

Uber and Lyft, a Set of Rules to Call Their Own."



Marc Laredo

chaired a continuing legal education program for the Massachusetts Bar Association entitled "It's

Confidential — Privilege Law in Massachusetts."



Mark Smith

has been named the President-Elect of the Boston Bar Association. The BBA oversees 24 sections and more than 100

committees dedicated to substantive areas of law as well as issues such as access to justice.

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Since July 2012, Massachusetts General Laws Ch. 151B has prohibited discrimination in employment, housing, lending, and credit and mortgage services based on an individual's gender identity. In addition, the definition of a "hate crime" was expanded to include criminal acts motivated by prejudice towards transgender individuals, and discrimination based on gender identity in public schools was prohibited. In continuing these protections, effective October 1, 2016, owners, lessees, proprietors, managers, superintendents, agents or employees of any place of public accommodation that lawfully segregates or separates access based on a person's sex are required to grant all persons admission to, and the full enjoyment of, such place of public accommodation or portion thereof consistent with the person's gender identity. While businesses are not required to do away with sex-segregated restrooms, locker rooms, and changing rooms, or create gender-neutral facilities, businesses must allow transgender people to use the facility most consistent with their gender identity.

Businesses should presume that an individual is using the facility most consistent with that person's gender identity. If an employee has a legitimate concern about whether a person is using the appropriate facility, the AGO suggests that the employee attempt to resolve the issue through a private and discrete conversation with that person and ask, for example, "Are you using the appropriate facility?" In most cases, a verbal confirmation should be the end of the inquiry. However, if an employee has reasonable grounds to believe that a person is using the facility for an improper purpose, such as, photographing or videotaping other patrons without permission, the business may take action consistent with its usual policies regarding removing the person and, if warranted, contact law enforcement.

Businesses should foster an inclusive and welcoming environment by, for example, revising policies and training to communicate that discrimination and harassment on the basis of gender identity is prohibited; updating employment documents to reflect an employee's stated name and gender identity; and providing the public and employees access to any sex-segregated facility based on the individual's gender identity.

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