



GENDER AND NON-DISCRIMINATION LAWS: YOU MUST BE AWARE

The fight for equal rights in the United States has impacted society and its laws in a multitude of disparate and ever-evolving ways. Regardless of one's political or social proclivities, determining how to address discrimination is a significant and ongoing political and social debate, with lawmakers, and society at large, continuously defining and redefining what constitutes unlawful discrimination.

Equal rights have meant various things to various classes of people throughout the history of the United States. During the women's suffrage movement, women sought the right to vote. During the Civil Rights Era, protesters fought for equal access to the ballot, the right to learn in non-segregated schools and the right to eat in non-segregated restaurants. More recently, civil liberties proponents, and consequently courts, legislatures and the news media, have increasingly focused on the experiences of discrimination that members of the LGBT community face.

As new, uncharted issues involving civil liberties continue to arise in society, they inevitably impact businesses that cater to the general public. Today, non-discrimination for transgender and gender non-conforming individuals, in particular, has taken the forefront of political and social debate. And it has become an important issue for business owners to consider.

In the past 15 years, federal appellate courts have increasingly recognized that discrimination against a transgender person is a form of sex discrimination prohibited by federal law. For example, under Title VII, transgender employees, public and private, who feel they have experienced employment discrimination can file complaints with the Equal Employment Opportunity Commission. Additionally, at least 18 states and the District of Columbia expressly ban discrimination based on gender identity, as do over 130 cities and counties across the United States.

Franchise owners will inevitably come in contact with customers, employees or colleagues who are transgender or gender non-conforming. As such, it is important to think about whether

your business provides a safe and comfortable environment for everyone. What's more, as a business owner, it is imperative to be knowledgeable and well-versed with regard to your legal obligations.

In the area of equal access for transgender individuals, the so-called "bathroom laws" have garnered substantial attention recently. These laws generally seek to regulate the use of public facilities – such as bathrooms, changing rooms or locker rooms – by transgender individuals. Considering the high traffic of those areas in fitness facilities, fitness businesses must especially be aware of the anti-discrimination laws that may be implicated in connection with their operations. In fact, a member of a Michigan-based Planet Fitness® franchise recently filed a lawsuit against the club and the franchisor alleging that the termination of her membership as a result of her complaining about its locker room usage policy violated her civil rights and was a breach of contract. The case was dismissed. In response to some press relating to the matter, Planet Fitness issued the following statement that appeared in various public media:

"The manner in which this member expressed her concerns about the policy exhibited behavior that management at the [franchised] club deemed inappropriate and disruptive to other members, which is a violation of the membership agreement and as a result her membership was canceled.

Planet Fitness is committed to creating a non-intimidating, welcoming environment for our members. Our gender identity nondiscrimination policy states that members and guests may use all gym facilities based on their sincere self-reported gender identity."

Compliance with the law is murky at best and requires familiarity with the federal and local laws alike. Indeed, while the federal government has only weighed in on the legal debate,



by Justin M. Klein

several states have actually passed, or attempted to pass, their own regulations relating to the use of public facilities. Amid the possible confusion from potentially contradictory regulations, it is essential you know what your local laws are, as well as how they mesh with federal laws.

For starters, prior to the most recent administration change, the federal government took the position that schools must provide a “supportive” and “nondiscriminatory” environment for transgender students. While this is not a law, it offered guidance as to the federal government’s general position on matters relating to transgender individuals; how this position changes or remains the same under the current administration remains to be seen.

Individual states – like California and North Carolina – have enacted “bathroom laws” to specifically declare their state’s position on the issue. In September 2016, California Gov. Jerry Brown signed a bill that mandates single-occupancy public bathrooms be gender-neutral in order to enable easier access for transgender people. The law went into effect on March 1, 2017. Similarly, New York City law requires single-stall, public bathrooms to be gender neutral. Other states – including Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Massachusetts, Maryland, Minnesota, New Jersey, Nevada, New Mexico, Oregon, Rhode Island, Vermont, Washington and the District of Columbia – have laws that protect persons based on gender identity but do not specifically address the transgender bathroom issue.

On the other hand, legislatures in other states have presented bills requiring transgender individuals to use only the restroom that matches the sex on their birth certificate. North Carolina, for example, enacted such a law, while lawmakers in Virginia, Wisconsin and South Dakota introduced similar bills only to see them subsequently fail.

So, what does all this mean for franchisees? All business owners must comply with the law, which means creating an environment for your employees and customers that is not only clean and safe, but is also free from discrimination, as defined by the laws of your state and municipality. If you are in a state that expressly regulates use of locker rooms or bathrooms, you need to be aware of those regulations and ensure compliance.

You are also responsible for ensuring that your employees are properly trained on the issues and applicable laws as they relate to customers as well as their co-workers. Interestingly, because of recent attention around the National Labor Relations Board’s review of joint employment in the franchise context, many franchisors are taking a hands-off approach to employment issues like this, leaving franchisees on their own to understand and comply with all laws that impact the daily operations of their franchise. As such, it is incumbent the franchise owner to learn the issues, to appropriately train staff and to have the right team of professionals on call to help steer clear of any problems.

The landscape of anti-discrimination laws aimed at protecting transgender and gender non-conforming individuals is changing every day. The best advice is to be sure you know the issues and how to comply with any laws that are enacted. ⚙

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