

# HOW SHOULD EMPLOYERS PROVIDE BATHROOMS FOR TRANSGENDER EMPLOYEES? OSHA HAS THE ANSWER.

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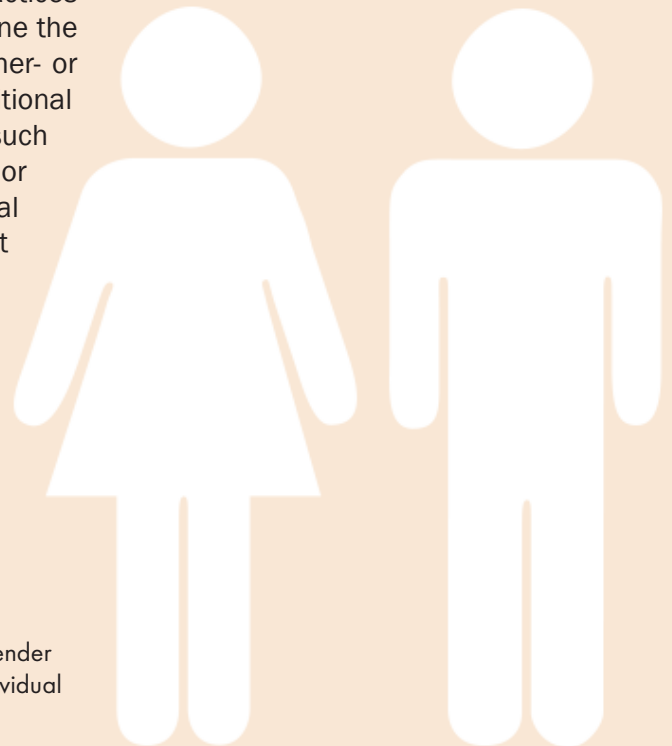
One of the great equalizing principles in life is that everyone, regardless of gender, has to use a bathroom. This leads to one of the touchier issues involving employers and transgender employees, however, as bathroom use is generally divided by gender. Should employers allow transgender employees to use the bathroom of her or his gender identity? Should employers require transgender employees to use the bathroom of his or her gender assigned at birth? Luckily, OSHA recently released guidance to help employers understand the needs of transgender persons.

OSHA does not play coy with its advice. The OSHA publication of the guidance states at the top, “Core principle: All employees, including transgender employees, should have access to restrooms that correspond to their gender identity.”<sup>1</sup> OSHA’s advice, however, extends well beyond this statement. The crux of OSHA’s concern is that its sanitation standards require employers to provide employees with access to toilet facilities, but transgender persons may have health or safety issues beyond those of cisgender<sup>2</sup> individuals. Employer best practices allow a transgender employee to determine the most appropriate and safest option for her- or himself. OSHA also suggests that additional bathroom options for all are appropriate, such as single-occupancy unisex bathrooms, or even multiple-occupant, gender-neutral bathrooms with lockable single-occupant stalls.

Employers should not ask employees to provide any documentation of their gender identity to have access to bathroom facilities, and employers should not, under any circumstances, require transgender employees to use

segregated bathroom facilities that keep them from other employees. The EEOC ruled in April that transgender employees cannot be denied access to common restrooms used by others of the same gender identity. It does not matter whether the employee had any procedures to change the employee’s physical sex or if other employees have negative reactions to such use of the restrooms.

The EEOC, in the case of *Lusardi v. McHugh*, took the position that such denials or segregation of transgender persons constitutes impermissible sex discrimination under Title VII of the Civil Rights Act of 1964. Federal agencies such as OSHA and the EEOC are recognizing the difficulties transgender employees face in the workplace and are making moves to combat discrimination. Employers should review bathroom policies in the workplace, as well as any other policies that may have a disparate impact on transgender, gay, lesbian or bisexual employees.



<sup>1</sup> <https://www.osha.gov/Publications/OSHA3795.pdf>

<sup>2</sup> Cisgender individuals identify with the gender that corresponds to the gender assigned to the individual at birth