

## Massachusetts Joins Other New England States In Protecting Gender Identity

Companies With 6+ Employees In Massachusetts Affected

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Effective July 1, 2012, "gender-identity" will become a protected status under Massachusetts anti-discrimination laws. This means that private employers with at least six employees in Massachusetts, *even if headquartered elsewhere*, will be prohibited from considering gender identity when making decisions regarding hiring, promotion, termination, or any other terms and conditions of employment. The new law also prohibits harassment on the basis of gender identity.

The Massachusetts law 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." As a result, this statute will protect persons who have undergone sexual reassignment surgery, as well as persons who behave or appear in a manner that is not traditionally associated with the person's physiology or sex at birth.

Employers familiar with Massachusetts anti-discrimination law may wonder if this is actually a change in the law; in 2001, the Massachusetts Commission Against Discrimination ruled that sex discrimination included discrimination on the basis of gender identity and gender expression. While some Massachusetts courts issued similar decisions or found protection for transgender persons on the basis of disability or sexual orientation, other courts have declined to do so. The new statute clears up any confusion in the court cases. Massachusetts now joins Maine, Vermont, Connecticut and Rhode Island and 11 other states and the District of Columbia which provide workplace protection to transgender and transsexual persons.

While New Hampshire has not enacted similar legislation, New Hampshire law suggests that transsexualism is protected by N.H. RSA 354-A. At least one New Hampshire court held that transsexualism is a protected "handicap" under the state discrimination law, N.H. RSA 354-A. Thus, employers with New Hampshire employees also should adopt practices to avoid discrimination and prohibit harassment of trans-gendered and transsexual persons to avoid potential litigation.

In light of these developments, employers with employees in any New England state, other than New Hampshire, should update their equal employment opportunity and harassment policies to make sure that they include gender identity and/or gender expression as a protected status. All New England employers should consider the impact of these developments on other employment practices such as dress codes, access to bathrooms and reasonable accommodations.

Employers who learn of an employee's transgender status, even through a simple application question such as "other names used," will need to take precautions to ensure that gender identity is not considered in the hiring process, just as employers have learned to do with age, race, religion and any other legally protected status.

For additional information or assistance on how to minimize risk related to gender identity and transsexual discrimination, please contact [Karen Aframe](#), [Pat Peard](#) or any member of our [Labor and Employment practice](#).