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Connecticut is set to join the ranks of 14 other states, the District of Columbia, and over 130 municipal entities that have enacted laws prohibiting discrimination based on gender identity or expression.

Connecticut Prohibits Gender Identity or Expression Discrimination

By Jennai S. Williams and Craig Dickinson

After failing to adopt similar provisions in prior years, the General Assembly passed House Bill No. 6599 on June 3, 2011. Now designated as Public Act 11-55 (P.A. 11-55), the proposed law has been signed by the Governor and will become effective on October 1, 2011. P.A. 11-55 will expand the scope of Connecticut's anti-discrimination laws to prohibit discrimination on the basis of "gender identity or expression" in the realms of employment, housing, public education and accommodations, insurance, credit transactions, state contracts, programs and services, and economic development.

Effect on Connecticut's Employment Discrimination and Public Accommodation Laws

P.A. 11-55 will prohibit employers, employment agencies, and labor unions, except in the case of a bona fide occupational qualification or need, from refusing to hire, discharging, or otherwise discriminating against individuals in compensation or in terms, conditions, or privileges of employment or membership because of the individual's "gender identity or expression." These entities are also banned from engaging in harassment on the basis of gender identity or expression, as well as from advertising employment opportunities in a discriminatory fashion unless there is a bona fide occupational qualification or need.

P.A. 11-55 will also make it unlawful to discriminate, segregate or separate individuals on account of their gender identity or expression, and it will require employers to provide full and equal accommodations "in places of public accommodation, resort, or amusement." As the proposed law does not address the impact of these provisions on traditionally gender-segregated spaces, such as restrooms and locker rooms, it appears that transgender individuals must be allowed to use the facilities of their choice.

Importantly, P.A. 11-55 provides an exemption for religious corporations, entities, associations, societies and educational institutions who employ individuals to perform work connected with carrying on their activities. These entities are also exempted with respect to matters of their discipline, faith, internal organization or ecclesiastical rule, custom or law.

Although the General Assembly expanded the scope of Connecticut's employment discrimination laws to include "gender identity and expression," it did so within the context of the existing statutory and administrative framework. Accordingly, claims of unlawful discrimination or harassment based on gender identity or expression will be adjudicated in the same manner as other types of discrimination and harassment claims and will be subject to the same requirements with respect to exhaustion of administrative remedies, allocation of burden of proof, and available remedies.

What is "Gender Identity or Expression"?

P.A. 11-55 defines *gender identity or expression* 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." This definition reflects the legislature's intent to broaden the anti-discrimination laws to also prohibit discrimination against transgender or transsexual individuals. The definition of *gender identity and expression* extends beyond individuals with transgender identities; it includes all individuals, regardless of whether their identity, appearance, and behavior are *consistent with* their physical sex at birth or whether their identity, appearance, and behavior conform to any gender norms at all. As such, both women and men must be permitted to express themselves in the workplace in accordance with whatever gender they identify, as long as their gender expression does not run afoul of any of the employer's gender-neutral dress codes and other workplace policies.

While an individual's "gender identity or expression" will be obvious in some circumstances, in other cases it may be extremely difficult to distinguish from other aspects of an individual's identity or expression of their identity. Notably, the law does not specify what aspects of one's identity, appearance, or behavior are "gender-related" or not. Practically speaking, employers will need to determine, often on a case-by-case basis, which behaviors are protected and which are not.

In an attempt to reduce potential abuses of this protection, the bill specifies that the person's gender-related identity must be "sincerely held, part of a person's core identity, or not being asserted for an improper purpose." Although the word "or" suggests that only one of the three elements needs to be met, it is arguable that this is a typographical error and that all three factors should be present. These requirements may be satisfied through various types of evidence, including a person's medical history, receipt of care or treatment related to the gender-related identity, or evidence showing that person's "consistent and uniform assertion of the gender-related identity."

In practice, P.A. 11-55 will require employers to make individualized, and sometimes rapid, assessments of whether a particular individual's behavior or expression of their identity is "sincere," part of the individual's "core identity," or being asserted for an "improper purpose." This determination will be especially difficult in cases where the employer does not possess medical or other evidence from which to make an informed decision, as in the case of job applicants, temporary employees, or members of the public. In order to avoid discrimination or harassment claims, employers should train their workforce to be sensitive to all types of gender-identity or expression, regardless of whether such expressions conform to traditional notions of what it is to be "male" or "female." They should also stress to their employees the importance of being respectful of other individuals' privacy and explain what would be required to demonstrate that the person's behavior or expression of his or her identity is not "sincerely held, part of a person's core identity," or is "being asserted for an improper purpose."

What this Means for Employers

Because this law will become effective on October 1, 2011, employers should review their anti-discrimination and harassment policies and revise them to the extent needed to ensure their employees are aware of the impending prohibition against discrimination based on gender identity and expression. This may include providing training sessions or materials to educate employees and revising training policies, procedures, and handbooks. Employers should also make sure that their restroom, dress code, and other policies are gender-neutral and do not discriminate on the basis of gender identity and expression.

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