Ancel Glink | Diamond Bush DiCianni & Krafthefer

International Municipal Lawyers Association
2017 Annual Conference
Niagara Falls, Ontario, Canada

October 17, 2017

Demystifying the Transgender Laws: How to Prevent Bathroom Battles from Becoming an Issue in Your Municipality

Keri-Lyn J. Krafthefer

Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer. P.C.

Chicago, Illinois

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

What are we talking about, anyway?

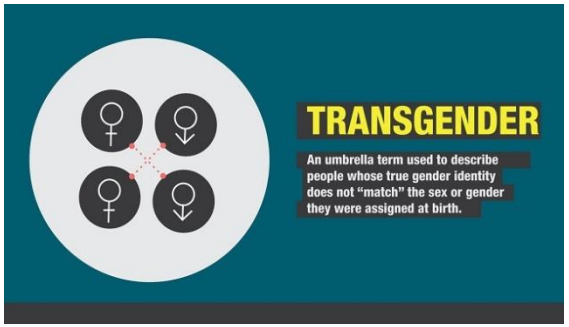
- "Transgender" is the umbrella term that describes individuals whose gender given to them at birth does not match the gender that they truly feel that they are, regardless of whether they have had gender reassignment surgery.



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Terms:

- *"Assigned gender"* – the gender given to everyone at birth based on physical anatomy
- *Gender identity or "affirmed" gender* – is a person's deeply held sense of their own gender (regardless of body parts)
- "*Transgender female*" is a person born male who identifies as female
- "*Transgender male*" is a person born female identifying as a male
- NOTE: Courts use the word "sex" and "gender" interchangeably, but distinguish "gender identity"



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Terms:

- "*Transvestite*" is a person who derives pleasure from dressing in the clothes of the opposite gender
- *Reassignment surgery* – the surgical procedure that an individual undergoes to conform their body to their gender identity
- *"Gender nonconforming"* – describes people whose gender expression differs from stereotypical societal expectations related to gender.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Transition

- *"Transition"* is the time when a person begins to live as the gender with which they identify instead of the gender with which they were born
  - Generally begins with a diagnosis of gender dysphoria
  - First step is a court-ordered name change
  - To change the gender marker on your IL driver's license:
    - either a certified copy of your amended birth certificate; or
    - a letter or affidavit from your physician certifying that you have taken or are taking appropriate clinical steps to change your gender.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Laws on Transgender Rights

Local laws

State and federal legislation

Governmental edicts/

Executive Orders

A Boy's Life

Agency and Court guidance



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Laws on Transgender Rights

- Changing rapidly
- Tied in with developments in society
- Emotionally charged
- All over the board



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

US Federal Law

- Title VII (Civil Rights Act of 1964): prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion. It applies to employers with 15 or more employees, including federal, state, and local governments. Title VII also applies to private and public colleges and universities, employment agencies, and labor organizations.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

US Federal Law

- Title IX (Education Amendments Act of 1972): provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity that receives Federal financial assistance. It applies to all educational institutions, both public and private, that receive federal funds.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Canadian Law

- Section 15 of the Canadian Charter of Rights and Freedoms prohibits the main types of discrimination to which transgender Canadians may be subject. Section 15(1) reads:
  - Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability
- The Constitution of Canada does not explicitly grant or deny any right to transgender people
- Court decisions decided under Section 15 of the Canadian Charter of Rights and Freedoms, which was included in the Constitution of Canada in 1982, have been construed to extend rights to transgender individuals

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology of Significant Transgender Events

1984

7th Circuit finds a transsexual pilot is not entitled to Title VII sex discrimination protection, interpreting sex discrimination as "against women because they are women and men because they are men." "The words of Title VII do not outlaw discrimination against a person who has a sexual identity disorder." Ulane v. Eastern Airlines, Inc., 742 F.2d 1081

1989

U.S. Supreme Court rules in Price Waterhouse v. Hopkins that Title VII grants relief to a (non transgender) woman who is treated differently because she is "too masculine" and brash. 490 U.S. 228 (1989)

January 8, 1999

A Canadian Court found the respondent discriminated against Ms. Sheridan, a transsexual, when it told her not to use the women's washroom. Sheridan v. Sanctuary Investments, 1999 BCHRT 4.

1993-2002

Certain courts do not interpret the holding of Price Waterhouse as applying to transgenders.

(E.D.Pa. 1993, D. Kansas 1995, E.D. La. 2002)

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology of Significant Transgender Events

April 14, 2003

The Canadian Medical Services Plan discriminated in relation to funding for certain stages of gender reassignment surgery. Waters v. BC Medical Services Plan, 2003 BCHRT 13

2004

In Smith v. Salem, the 6th Circuit holds that Title VII's definition of "sex" extends to transgenders, and grants a transsexual firefighter protection. This is the first federal appellate ruling applying Title VII in this manner. 378 F.3d 566

January 21, 2005

U.S. states start acting. The Illinois Human Rights Act is amended to include sexual orientation as a protected class. "Sexual orientation" is defined to include "gender-related identity." 775 ILCS 5/1-103

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

October 27, 2006

Washington D.C. Office of Human Rights issues ban from labeling of single-occupancy bathrooms, although this is not enforced until 2013. Also adopts rule that individuals can use restrooms and other gender-specific facilities such as consistent with their gender identity or expression.

April 20, 2012

EEOC rules that Title VII's definition of "sex" prohibits discrimination on the basis of gender identity or transgender status.

Macy v. Holder

May 8, 2013

Philadelphia enacts an Ordinance requiring all new City construction to include gender-neutral bathrooms and making it an "unlawful public accommodations practice" to deny a person access to a bathroom correlating with his/her gender identity.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

June, 2013

The Colorado Civil Rights Division made a determination of probable cause that a school district discriminated against a transgender student by refusing to allow her to use the girls' restroom at school in violation of State anti-discrimination laws. This was the first administrative/judicial ruling to recognize the right to use restroom facilities on the basis of gender identity. Mathis v. Fountain-Fr. Carson Sch. Dist. 8, No. P20130034X (Colo. Dep't Reg. Agen., Div. of Civil Rights)

July, 2013

In California, a student attending Arcadia Unified S.D. since kindergarten, now entering 9th grade, identifies as a boy from a young age and begins transitioning in 5th grade. The school provided a gender neutral bathroom for the student's use. In 2011, DOJ received a complaint that the district did not allow the student to use the boy's restrooms and locker rooms. In 2012, the student obtained a judicially revised birth certificate. In 2013, the District entered into a resolution agreement with the US Dept of Ed. Office of Civil Rights agreeing to treat the student like all other male students, among other things. Student v. Arcadia Unified Sch. Dist, 09-12-1020 (OCR)/169-12C-70 (DOJ)

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

July 29, 2013

Canadian male to female transsexuals who had transsexual surgery sought Medicare funding for electrolysis, voice therapy, and breast augmentation; and argued that the denial of those services constituted discrimination on the basis of sex. The Court found for the State because complainants could not point to a similar service that was available to other people but denied to them because they were transgender. No one was covered to have voice therapy or electrolysis; and the same rules about breast augmentation for non-transgender people applied to transgender people. Brodeur v. Ontario, 2013 HRTO 1229.

September 5, 2014

A transgender student filed suit against a number of school districts in Michigan claiming he was discriminated against in violation of Title IX because of his status as a transgender male. Tooley v. Van Buren Pub. Sch., No. 14-13466 (E.D. Mich). In February, 2015, the U.S. Department of Justice filed a "statement of interest" in support of the student's arguments that Title IX and the Equal Protection Clause prohibit sex discrimination against transgender individuals. A hearing is pending on defendants' motion to dismiss.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

cember 15, 2014

Former U.S. Attorney General Eric Holder issues a memo opining the DOJ takes the position that protections of Title VII extend to gender identity and transgender, notwithstanding conflicting federal appellate court rulings.

March 24, 2015

Canadian court found respondent discriminated against Ms. Dawson, a transgender woman, when it referred to her as male and in relation to medical treatment she required post-surgery while she was in jail. Dawson v. Vancouver Police Board (No. 2), 2015 BCHRT 54.

April 24, 2015

Caitlyn Jenner comes out as transgender during a 20/20 interview with Diane Sawyer.

June 1, 2015

OSHA issues guidance for employers that "All employees, including transgender employees, should have access to restrooms that correspond to their gender identity."

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

August 10, 2015

Seattle passes a gender neutral bathroom ordinance for single occupancy bathrooms.

November 2, 2015

U.S. Dept. of Education Office for Civil Rights finds that Palatine Township H.S.D. 211 violated Title IX by denying transgender student access to girls' locker room. The parties' settle by agreeing that the student may use the girls' locker room, changing behind a privacy screen. OCR Case 05-14-1055

November 13, 2015

Evanston passes an ordinance requiring certain single-occupancy bathrooms to be designated as gender neutral, others to be labeled as "male" or "female" and not addressing which restrooms transgenders should use.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

January 14, 2016

A Canadian Court held the purpose of adding "gender identity" and "gender expression" to the Ontario Human Rights Code was to ensure beyond any doubt that the rights of transgendered and other gender non-conforming persons were protected. In this case, the Ontario Tribunal held that "gender expression" does not protect the right of cisgendered (gender conforming) men to wear beards. Browne v. Sudbury Integrated Nickel Operations, 2016 HRTO 62.

March 23, 2016

North Carolina enacts House Bill 2 – Local boards of education shall not permit students to use multiple occupancy bathrooms or changing facilities designed for a sex other than the student's biological sex.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

April 18, 2016	April 19, 2016	May 4, 2016	ay 4 (same day)
Target announces that transgenders can use the store's bathrooms that match their gender identity.	The U.S. Court of Appeals for the Fourth Circuit rules in the case of G.G. v. Gloucester County School Board that the Gloucester County School Board violated Title IX by denying a transgender boy access to the boys' restrooms.	The DOJ writes to the Governor of North Carolina informing him that H.B.2 violates Title VII and demands that the Governor remedy the violations by no longer implementing H.B.2.	51 families of students who attend Palatine Twp S.D. 211 file suit against the DOJ and the DOE challenging the settlement agreement and the DOJ/DOE's interpretation of Title IX claiming "sex" does not equal "gender identity." Students and Parents for Privacy v. U.S. DOE, et al., 16 CV04945 N.D. IL

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

May 9, 2016

The Governor of North Carolina files suit against the DOJ seeking declaratory relief confirming that H.B.2 does not violate Title VII. McCrory v. USA, et al., case no. 5:16-cv-00238, U.S.D.C. E. Dist. of NC

May 9 (same day)

The DOJ files suit the same day against North Carolina seeking declaratory relief confirming that North Carolina is in violation of Title VII and Title XI by complying with the provisions of H.B.2. US v. State of North Carolina, Case no. 1:16-cv-00425 U.S.D.C. Middle Dist. of NC

May 13, 2016

The DOJ and DOE release a "Dear Colleague Letter" to schools across the country regarding Title IX compliance when it comes to transgender students. It states schools must allow transgender students to use facilities consistent with their gender identity, and that a school may not require a transgender to use individual-user facilities when other students are not required to do so. It also states schools could lose federal funding unless they comply.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

May 25, 2016

Thirteen states file suit against the DOJ, DOE, EEOC & DOL in Texas challenging the new interpretations of Titles VII and IX regarding gender identity. They allege that the new rules did not comply with the Fed. APA, which requires a notice and comment process before a federal agency may finalize a new rule. Texas v. US, Case 7:16-cv-00054, N.D. of Texas, Wichita Falls

June 10, 2016

Highland Local School District in Ohio files suit against the DOE and the DOJ seeking to stop implementation of the DOJ and DOE guidance on transgender students. BOE of the Highland Local School District v. US Dept of Ed., case no. 2:16-cv-00524.

July 8, 2016

Ten additional states sue the DOJ, DOE, EEOC, and DOL challenging new interpretations of Title VII and Title IX regarding gender identity on the grounds that these new rules violated the Federal APA and several other federal laws.

July 28, 2016

The Seventh Circuit rules in Kimberly Hively v. Ivy Tech Community College that "sex" as used in Title VII does not include sexual orientation, urging the Supreme Court to clarify or Congress to act. Case No. 3:14-cv-1791 ("The First Hively Case")

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

July 20, 2016

Caitlyn Jenner says it was harder to come out as Republican than transgender

Ivan Levingston | @IvanLevingston
Wednesday, 20 Jul 2016 | 2:39 PM ET
CNBC



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

August 3, 2016

The Supreme Court of the US issues a stay of the Fourth Circuit's ruling in G.G. v. Gloucester County School Board. The stay is granted pending the grant or denial of Gloucester County School Board's petition for a writ of certiorari.

August 21, 2016

The District Court for the N.D. of Texas issues a preliminary injunction in enjoining the DOJ, DOE, EEOC, and DOL from enforcing the new guidance and rules interpreting Title VII and Title IX to protect discrimination based on gender identity.

September 7, 2016

The parents of several students who attend a Minnesota school district file suit against the DOJ and the DOE challenging the new guidance and interpretation of Title IX and alleging that the school district allowed a transgender girl access to the girls locker room based on the guidance contained in the May 13, 2016 "Dear Colleague Letter."

September 9, 2016

Texas Attorney General Ken Paxton publicly urges Target to revise their new policy allowing transgender individuals to use bathrooms consistent with their gender identity in response to two recent incidents of males spying on females in Target restrooms.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

September 12, 2016

The NCAA announces that it will relocate all seven of its championships, including March Madness outside of North Carolina due to H.B. 2.

Same Day

The Virginia Supreme Court agrees to hear an appeal of a case where the Fairfax County S.D. amended its anti-discrimination policy to include "sexual orientation," "gender identity," and "gender expression." The circuit court had dismissed the suit.

Same Day

The DOJ files a request for clarification in Texas v. US, requesting that the District Court Judge clarify that his preliminary injunction order applies only to schools and not to workplaces.

September 14, 2016

The Atlantic Coast Conference (ACC) announces that they will pull all of their championship games out of North Carolina.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

September 26 2016

A judge in the Southern District of Ohio grants a preliminary injunction against Highland Local S.D. allowing a transgender female student access to the girls restrooms. The School District immediately appealed the decision to the Court of Appeals for the 6th Circuit.

October 11, 2016

The 7th Circuit vacates its July 26, 2016, Order in the case of Kimberly Hively v. Ivy Tech Community College, which held that "sex" as used in Title VII does not include sexual orientation, and granted a rehearing *en banc*.

October 16, 2016

Harrison Browne, a professional ice hockey player for the National Women's Hockey League, announced he identified as male, making him the first openly transgender professional team sport athlete in the U.S. He announced his retirement in March, 2017 in order to begin the process of transitioning.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

October 18, 2016

A federal magistrate judge in Students and Parents for Privacy v. U.S. DOE recommends against granting a preliminary injunction prohibiting Palatine Twp. S.D. 211 from complying with the settlement agreement with the DOJ/DOE on transgender students access to locker rooms of their choice.

October 19, 2016

The District Court judge in Texas v. US, confirms that his preliminary injunction against the DOE and DOJ from enforcing the new Title IX rules applies nationwide. The judge did not clarify if the injunction is limited to schools.

October 20, 2016

The DOJ files a notice of appeal to the 5th Circuit in Texas v. US challenging the preliminary injunction preventing the enforcement of the new Title IX rules.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

October 28, 2016 | **November 16, 2016** | **December 2016** | **December 15, 2016**

The U.S. Supreme Court grants the Petition for a Writ of Certiorari in G.G. v. Gloucester County School Board.

Canadian Prime Minister Justin Trudeau created the position of Special Advisor on LGBTQ2 issues to promote equality for the LGBTQ2 community, protect the rights of its members, and address discrimination against them.

A judge in a Minnesota lawsuit challenging the DOJ/DOE new Title IX rules places the case on hold pending a ruling form the Supreme Court in G.G. v. Gloucester County School Board.

The 6th Circuit denies the request of Highland Local S.D. in Ohio for a stay of the injunction ordering the school district to allow a transgender female access to the girls restroom pending the outcome of the appeal.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

ebruary 22, 2017

The DOJ and DOE, now under the Trump Administration, rescind the Obama Administrations Title IX guidance that was set forth in the "Dear Colleague" letter.

March 6, 2017

The U.S. Supreme Court vacates the judgment of the 4th Circuit in G.G. v. Gloucester County School Board and remands the case back to the 4th Circuit based on the Trump Administration's rescinding of the DOJ/DOE's prior Title IX guidance.

March 3, 2017

Thirteen states drop their lawsuit against the DOJ/DOE based on the Trump Administration's rescinding of the DOJ/DOE's prior Title IX guidance in Texas v. US.

March 30, 2017

North Carolina repeals H.B.2, the "Bathroom Bill." Shortly thereafter, a new bill was introduced in the state legislature to force N.C. universities to leave the Atlantic Coast Conference ("ACC") if the ACC banned the state from hosting championships in the future.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

April 4, 2017

The 7th Circuit, after a rehearing *en banc*, holds that it is impossible to discriminate on the basis of sexual orientation without discriminating on the basis of sex, which is prohibited under Title VII in Hively v. Ivy Tech Community College.

April 13, 2017

The parents group in Minnesota drops their lawsuit against the DOJ and DOE based on the Trump Administration's rescinding of the DOJ/DOE's prior guidance on Title IX.

Same Day

The Virginia Supreme Court affirms the dismissal of a lawsuit challenging a Fairfax County S.D. that added "sexual orientation," "gender identity," and "gender expression" to its anti-discrimination policy, finding the Plaintiffs lacked standing to challenge the policy.

April 14, 2017

The DOJ drops its lawsuit against North Carolina based on the recent repeal of H.B. 2 in US v. State of North Carolina.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

May 30, 2017

The 7th Circuit upholds a preliminary injunction allowing a transgender male student access to the boys restroom based on Title IX and the Equal Protection Clause in Whitaker v. Kenosha Unified School Dist. No. 1.

July 5, 2017

Canada issues a public health card for a baby without a gender designation. The baby's parents appeal Canada's refusal to issue a birth certificate to the child until a gender is designated, seeking to have no gender listed on the birth certificate as well.

ne 5 (same day)

Canada issues public health card for a baby without a gender designation.

June 19, 2017

Bill C-16 is introduced in the Canadian senate and becomes law, adding prohibitions against discrimination on the basis of gender identity. It also amends the criminal code to extend protections against hate speech to transgender individuals.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

June 26, 2017

President Trump tweets that transgender individuals are not allowed to serve in any capacity in the U.S. Military.

August 1, 2017

Netflix's original series *Transparent*, featuring a Los Angeles family and their lives following the discovery that their father is transgender, was nominated for 7 Emmy nominations.

August 20, 2017

The Canadian Immigration Minister announces Canadian passports will have a "X" for unspecified gender designations along with "M" for male and "F" for female.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Chronology

September 15, 2017

Sen. John McCain co-sponsored legislation that would prohibit Trump from preventing transgender individuals from serving in the military, saying "when less than 1% of Americans are volunteering to join the military, we should welcome all those who are willing and able to serve our country."

September 16, 2017

U.S. Defense Secretary Jim Mattis issued a memo to top military leaders saying transgender service members may re-enlist and continue getting medical care until a commission studying the issue releases guidance next year.

September 25, 2017

Harrison Browne announced he would delay his transition from female to male in order to play another season in the National Women's Hockey League. The league doesn't require that players identify as female, but says they must not be using hormone therapy if they are transgender men.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Where does this leave us???

- **Clarity in Canada**
- **US: Conflicting laws, court opinions and agency direction, exacerbated by change in political leadership**
- **The real legal issues involve states' rights + agency rulemaking**
- **High emotions on all sides**
- **Events are occurring almost daily**
- **Congress has not acted to amend Title VII or Title XI to include gender identity**

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Target

April 19, 2016 Target announces transgender customers can use bathrooms and fitting rooms matching their gender identity

Over 1.5 million people signed a petition vowing to boycott Target as long as such policy is in place.

Target's revenues drop by $10 million in the next seven weeks. CEO Brian Cornell says sales decline is due to "difficult retail environment."

Target's revenues for the second quarter fall to lowest level since 2014; Wal-Mart's sales increase for the same period

August 17, 2016: Target announces it will spend $20 million installing single stall bathrooms in all stores

April, 2017: Reports indicate that Target is still feeling the impact of the #flushTarget boycott



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Bathroom issues



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Let's chat about body parts

Body parts + multi-stall bathrooms:

Gender reassignment surgery = who cares?

Male parts on transgender female + ladies' room = inside stall

Female parts + transgender male + men's room = inside stall

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

What is everybody afraid of?

- Haters gonna hate
- Deeply held gender identity beliefs v. deeply held privacy or religious beliefs
- Many instances of non-transgenders abusing transgender-friendly laws to gain access to facilities for perverted reasons

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Man strips in front of girls in locker room, says transgender law allows it

Bathroom Bills , Transgender , Transgenderism , Washington State

SEATTLE, Washington, February 18, 2016 (LifeSiteNews) - A man twice entered the changing room of a swimming pool and began disrobing, once in front of a young girls' swim team, saying transgender policies gave him the right to do so.

The unidentified man entered Evans pool in Seattle near Green Lake last Monday, February 8, and began taking off his shirt in front of female patrons.

When asked what he was doing, he said, "The law has changed and I have a right to be here."

"Seeing this individual in the locker room, parents of swim team members (girls) and women who had paid for lap swim became alarmed and alerted our front desk staff," said Seattle Parks spokesman David Takami in a statement. "In response, an Evans pool staff member entered the women's locker room and asked the man to leave." They offered both the man and the girls the opportunity to use a family changing room.

He left, only to return during a later youth lap swim, Takami said.

Officials said he had made no attempt to present himself as a woman, nor to identify as transgender when he checked in. By all appearances, he was a man.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

What is everybody afraid of?

- A few instances of transgenders doing the same
- Fear of the unknown



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All

Municipal issues

- Labeling of bathrooms
- Locker rooms
  - Police
  - Fire
  - Parks Departments or Recreation Programs

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

"The End of Girls' Sports"…

- "Her dreams of a scholarship shattered, your 14-year-old daughter just lost her position on an all-girl team to a male, and now she may have to shower with him."

a full page newspaper ad placed by the Minnesota Child Protection League after the Minnesota State High School League voted to allow transgender student athletes to play on the team with which they identify

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

How to Comply With Transgender Protections

- Workplace - employees
- Public services - patrons



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Best practices

- Have a policy before it becomes a problem
- Have a policy for employees and a policy for patrons

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

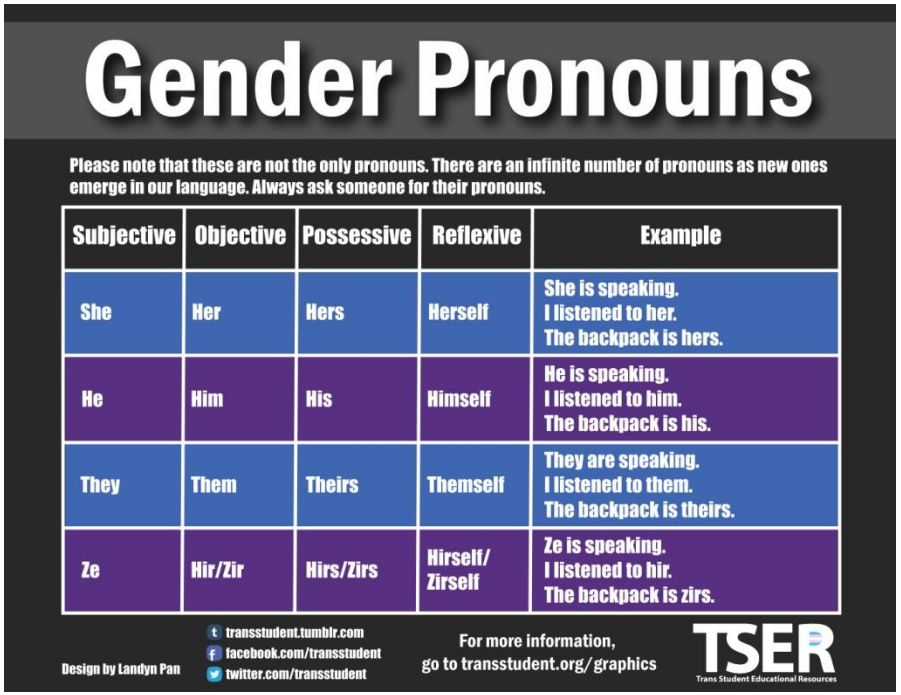
Workplace

- EEOC advises to implement a policy against discrimination
- Policy should address the following issues:
  - Terminology
  - Prohibition on discrimination

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Workplace

- Who to complain to about violations
- Rights of transgender individuals in the workplace
  - Privacy rights
  - Name to be used – Be careful of pronouns



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Workplace

- Employee responsibilities to respect
- Employer responsibilities to enforce
- Responsibilities of transitioning employees
- Dress code
- Complaints by co-workers
- Transgender employees
- Educate, educate, educate!

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

For Patrons, It's a Bit More Complicated

- EEOC and DOJ advise to have a policy which prohibits discrimination and addresses the following:
  - Restrooms – ideally gender neutral otherwise according to gender identity
  - Locker rooms – according to gender identity but private area for transgender and other individuals who do not want to change in a group setting

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

For Patrons It's a Bit More Complicated

- The best practice is to accommodate those who feel uncomfortable, whether or not they are transgender themselves

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

What about gender specific programs, especially sports?

- More complicated
- This needs to be addressed on a case-by-case basis, considering the following factors:
  - age of the participant
  - sport or program
  - gender identified on legal documents

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Other Supporting Information

- Physician statement (including psychiatric reports)
- Court ordered change of name
- Requirements of sponsoring organization (most require some confirming documentation)
- Whether the minor is pre- or post-pubescent
- Current medical treatments

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Your To Do List

- Be aware of the developing trends and law on transgender rights
- Adopt policies for employees/patrons/participants

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

More To Do List

- Create gender neutral bathrooms and private areas in locker rooms
- Train employees



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Collective bargaining obligations

- Remember that these issue may have collective bargaining implications

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Frequently Asked Questions



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 1

- Transgender rights only apply to individuals who have undergone reassignment surgery.



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Answer 1

- False! One aspect in the demystification of transgender individuals and rights is understanding what it means to be transgender. The word transgender is an umbrella term for people who identify with the gender that does not conform to the one assigned to them at birth. This may mean that a transgender person has undergone or is undergoing gender reassignment surgery, or it may mean that a person is simply living as the gender with which they identify without surgical reassignment.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 2

- If most co-workers are uncomfortable with a transgender co-worker, the comfort of the majority comes first.



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Answer 2

- In fact, the opposite is true. Who uses which bathroom, for instance, is currently a huge topic of debate in some places. OSHA and EEOC have issued guidelines on the subject of bathrooms (as has President Obama to schools) which clearly state that while gender neutral, single bathrooms are best, if an individual complains about a transgender person's use of the bathroom that they use, it is the one who complains who should be offered an alternative facility – not the transgender individual.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 3

- A public body can comply with the law if it provides a separate facility to the transgender individual.



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Answer 3

- Perhaps, if there is an agreement with the parties about this. Be careful in making something like a privacy screen in a locker room a mandatory requirement. Again, it is the one who complains who should be offered an alternative facility – not the transgender individual.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 4

- Transgender employees must use their legal name at work.



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Answer 4

- It is true that employers must report earnings to the IRS and Social Security Administration under an employee's legal name, even if that name does not conform to the employee's gender identity, but a transgender employee must be allowed to use at work any name they have chosen to match their gender identity. Repeated or malicious use of a name or pronoun which does not match an employee's preferred name may be considered harassment under the law.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 5

- Employers are not required to have a separate policy for transgender issues.



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Answer 5

- While this might be technically true, the best practice is to establish a policy or procedures for addressing transgender issues in the workplace. First of all, a solid policy and procedures will aid in defense of any claims of discrimination. Secondly, these issues are still new and unfamiliar to many in the workforce. Policies, procedures and training demystify many questions that people ask about transgender rights in the workplace.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 6

- If a member of public asks about the gender of a patron or participant, what should you do?



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Answer 6

- Patron and program participant information, like that of employees is private. It is no more appropriate for someone to ask about a person's gender assignment or identity than it is to ask about their marital status, their home address or their social security number. If ever asked this question or one similar to it, simply respond that the Village does not release any private information about participants or patrons but if they have any concerns about programs or services, you would be happy to assist them.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 7

- Our village offers a summer camp and we just learned that we are going to have a transgender camper. What should we do?



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Answer 7

- First, speak with the camper or the campers' parents. They may have a clear idea of how particular issues or concerns that may arise should be handled – and their proposals may eliminate problems in advance.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 8

- A co-worker announces he or she is transitioning to the opposite gender, you would like to talk about it with him or her. Is that okay?



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Answer 8

- Yes, it is okay to ask about a co-worker's transition provided they are comfortable speaking with you about it. Remember to follow their lead as to how they want to be treated, what name they want to be called and how private they want to keep the information.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 9

- You strongly suspect that a patron is pretending to be transgender as a joke or to mock those that really are or to have access to gender specific areas for criminal motive. How do you handle this?



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Answer 9

- This is the biggest fear of all with concerns about misuse of transgender rights. Any good faith suspicion that someone is pretending to be transgender for any of these reasons should be handled like any other misconduct by employees, patrons or participants.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 10

- When transgender participants are using the facility that corresponds to their gender identity, what do we do about open spaces such as changing areas?



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights re

Answer 10

- The transgender person has the right to be in the locker room. If they are comfortable changing in the open, then that's where they should change. If anyone is uncomfortable changing in the presence of a transgender person, then they should be accommodated.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Question 11

- What if a parent, participant or patron has a bona fide religious belief which does not agree with our gender identity policy?



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Answer 11

- The idea is to accept people as they are. Bona fide religious beliefs should be accommodated by providing an alternative restroom or locker room for that person.

© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.

Questions

Keri-Lyn J. Krafthefer
312-604-9126
kkrafthefer@ancelglink.com



© 2017 Ancel Glink Diamond Bush DiCianni and Krafthefer, P.C. All rights reserved.