

D.C. OFFICE OF HUMAN RIGHTS
AND
COMMISSION ON HUMAN RIGHTS

NOTICE OF FINAL RULEMAKING

The Office of Human Rights and the Commission on Human Rights, pursuant to section 301(c) of the Human Rights Act of 1977 (Act), effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c)), adopts a new Chapter 8 of Title 4 of the District of Columbia Municipal Regulations (DCMR) entitled "Compliance Rules and Regulations Regarding Gender Identity or Expression." Final action to adopt these rules was taken at the Commission's meeting on October 3, 2006. Notice of Proposed Rulemaking was published in the D.C. Register on June 9, 2006, at 53 DCR 4572. The Commission made changes to the text of the proposed rulemaking after considering comments by the public. These final rules will be effective upon publication of this notice in the D.C. Register.

Title 4, DCMR is amended by adding a new Chapter 8 to read as follows:

**CHAPTER 8 COMPLIANCE RULES AND REGULATIONS
REGARDING GENDER IDENTITY OR
EXPRESSION**

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Purpose

800.1

In order to meet the obligations to prohibit discrimination based on gender identity or expression as set forth in the Act, the Office and the Commission adopt this chapter for the following purposes:

- (a) To implement the provisions of the Act regarding discrimination based on gender identity or expression in employment, housing, public accommodations, or educational institutions, including all agencies of the District of Columbia government and its contractors;
- (b) To provide guidance with regard to the requirements of the law to all employers, housing providers, businesses, organizations, educational institutions, and District government agencies and contractors in seeking compliance with the law;
- (c) To educate the public on the behaviors, conduct, and actions that constitute unlawful discrimination based on gender identity or expression;

- (d) To ensure that transgender people are treated in a manner that is consistent with their identity or expression, rather than according to their presumed or assigned sex or gender; and
- (e) To guide the internal processing of complaints filed with the Office or cases heard by the Commission.

801 GENERAL PROHIBITIONS OF GENDER IDENTITY OR EXPRESSION DISCRIMINATION

801.1 It shall be unlawful for any person or entity, including agencies of the District of Columbia government and its contractors, to discriminate against a person in employment, housing, public accommodations, or educational institutions on the basis of that person's actual or perceived gender identity or expression. Such unlawful discriminatory practices shall include but not be limited to the following in:

- (a) **EMPLOYMENT:** failing to hire or promote; engaging in disparate treatment; engaging in unlawful termination and transfers; engaging in verbal or physical harassment; creation of a hostile environment; failing to make a reasonable accommodation when requested by the employee in accordance with 4 DCMR § 804 (1995); and denying access to restrooms and other gender specific facilities that are consistent with the employee's gender identity or expression.
- (b) **HOUSING AND COMMERCIAL SPACE:** refusing to show, rent, or sell real property that is available for lease or sale; discriminating in financial transactions related to real property; engaging in disparate treatment by adding or using different terms or conditions in a lease; refusing to make or provide services, repairs, or improvements for any tenant or lessee; denying access to restrooms or gender specific facilities in common areas that are consistent with an individual's gender identity or expression; creating a hostile environment; and failing to stop or prevent harassment by co-tenants, landlords, or property managers.
- (c) **PUBLIC ACCOMMODATIONS:** refusing to provide goods or services of any kind; engaging in disparate treatment in the provision of goods and services; engaging in verbal or physical harassment; creating a hostile environment; and denying access to restrooms and other gender specific facilities that are consistent with a customer's or client's gender identity or expression.
- (d) **EDUCATIONAL INSTITUTIONS:** refusing or limiting educational opportunities in admission, matriculation, or access to extracurricular activities; engaging in disparate treatment of a student; engaging in or

failing to prevent verbal or physical harassment; creating a hostile environment; and denying access to restrooms and other gender specific facilities that are consistent with a student's gender identity or expression.

- (e) DISTRICT OF COLUMBIA GOVERNMENT: refusing to provide any facility, service, program, or benefit of the District of Columbia government; engaging in verbal or physical harassment; creating a hostile environment; and denying access to restroom facilities and other gender specific facilities that are consistent with a person's gender identity or expression.

801.2 All entities covered under the Act shall clearly and explicitly communicate the District of Columbia's laws regarding gender identity or expression and other protected categories to all management, employees, and volunteers as required by D.C. Official Code § 2-1402.51.

802 RESTROOMS AND OTHER GENDER SPECIFIC FACILITIES

802.1 All entities covered under the Act, as amended, shall allow individuals the right to use gender-specific restrooms and other gender-specific facilities such as dressing rooms, homeless shelters, and group homes that are consistent with their gender identity or expression.

802.2 All entities covered under the Act with single-occupancy restroom facilities shall use gender-neutral signage for those facilities (for example, by replacing signs that indicate "Men" and "Women" with signs that say "Restroom").

803 ACCOMMODATIONS FOR HEALTH CARE NEEDS

803.1 When requested by the employee, an employer shall make reasonable accommodations (including medical leave) for transgender-related health care needs that are consistent with such accommodations that are provided for other medical needs. Such needs include but are not limited to medical or counseling appointments, surgery, recovery from surgery, and any other transgender-related procedures.

804 DRESS AND GROOMING STANDARDS

804.1 No employer, housing provider, public accommodation, educational institution, or any agency of the District of Columbia government or its contractors shall require individuals to dress or groom themselves in a manner inconsistent with their sex or their gender identity or expression.

804.2 Employers, housing providers, public accommodations, educational institutions, and agencies of the District of Columbia government and its contractors may prescribe standards of dress which shall serve a reasonable business purpose, as long as such standards do not discriminate or have a discriminatory impact on the basis of an individual's sex or the individual's gender identity or expression.

804.3 Except as otherwise provided in this chapter, the Office and Commission adopt and incorporate by reference the provisions of 4 DCMR § 512 (1995).

805 GENDER-SPECIFIC FACILITIES WHERE NUDITY IN THE PRESENCE OF OTHERS IS CUSTOMARY

805.1 All entities covered under the Act shall provide access to and the safe use of facilities that are segregated by gender.

805.2 In gender-specific facilities where nudity in the presence of other people is customary, entities covered by the Act shall make reasonable accommodations to allow an individual access to and the use of the facility that is consistent with that individual's gender identity or expression, regardless of whether the individual has provided identification or other documentation of their gender identity or expression.

805.3 Requiring documentation or other proof of an individual's gender is prohibited, except in situations where all persons are asked to provide documentation or other proof of their gender for a reasonable business or medical purpose.

806 RECORDING OF GENDER AND NAME

806.1 An entity covered under the Act shall not require an applicant to state whether the individual is transgender.

806.2 If an application form asks for the applicant to identify as male or female, designation by the applicant of a sex that is inconsistent with the applicant's assigned or presumed gender shall not be considered, without more, to be fraudulent or to be a misrepresentation for the purpose of adverse action on the application.

806.3 An applicant's giving of a name publicly and consistently used by the applicant, even when the name given is not the applicant's legal name, shall not be grounds for adverse action, if the name given is consistent with the applicant's gender identity or expression. However, where use of a person's legal name is required by law or for a reasonable business purpose, the applicant may be required to disclose it.

806.4 An applicant's failure to disclose a change of gender or name (unless specifically required as part of an application process for a reasonable business purpose) shall not be considered grounds for an adverse action.

807 BACKGROUND CHECKS

807.1 If an entity covered under the Act learns through a background check or other means that a person is transgender, the entity shall not, without more, take an adverse action against the individual on the basis of the learned information and shall take reasonable measures to preserve the confidentiality of that information.

808 HARASSMENT AND HOSTILE ENVIRONMENT

808.1 All harassment and actions that create a hostile environment based on gender identity or expression shall be prohibited.

808.2 The following behaviors may constitute evidence of unlawful harassment and hostile environment:

- (a) Deliberately misusing an individual's preferred name form of address or gender-related pronoun;
- (b) Asking personal questions about an individual's body, gender identity or expression, or gender transition;
- (c) Causing distress to an individual by disclosing to others that the individual is transgender; and
- (d) Posting offensive pictures, or sending offensive electronic or other communications.

In determining whether there is unlawful harassment or a hostile environment, the totality of the circumstances surrounding the alleged violation of the Act must be considered, including the nature, frequency, and severity of the behavior, whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with the alleged victim. Ultimately the standard is an objective one, focusing on whether the behavior was sufficiently severe or pervasive to alter the conditions of the victim's employment, housing, education, or access to or use of public accommodations, or relations with a District of Columbia agency or contractor, and to create an abusive environment.

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DEFINITIONS

899.1

When used in this chapter, the following terms and phrases shall have the meanings ascribed:

“Act” - the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*).

“Commission” – the Commission on Human Rights, established by section 401 of the Act (D.C. Official Code § 2-1404.01).

“Entities” - include all employers, housing providers, public accommodations, educational institutions, and government agencies and their contractors that come within the jurisdictional reach of the Act.

“Gender identity or expression” - a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.

“Office” – the Office of Human Rights, established by section 202 of the Fiscal Year 2000 Service Improvement and Budget Support Act of 1999, effective October 20, 1999 (D.C. Law 13-38; D.C. Official Code § 2-1411.01).

“Transgender” - an adjective that refers to any individual whose identity or behavior differs from stereotypical or traditional gender expectations, including transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristic are perceived to be gender-atypical.