

## California Transgender Rights Regulations

To further create workplaces free of sexual harassment and discrimination, California's Fair Employment and Housing Act ["FEHA"] has expanded regulations to require employers to honor an individual's gender identity, provide gender-neutral facilities, and display posters informing employees of transgender rights. The most notable amendments to the regulations (in effect **July 1, 2017**) include:

- A new exception to the Bona Fide Occupational Qualification ["BFOQ"] affirmative defense. Employers cannot use the fact that an individual is transgender or gender non-conforming, or that the individual's sex assigned at birth is different from the sex required for the job as a justification for applying BFOQ;
- A new rule requiring employers to permit employees to use facilities that correspond to the employee's gender identity or gender expression, regardless of the employee's assigned sex birth;
- New rules requiring employers

to honor an employee's gender identity, including requiring an employer to abide by an employee's preferred gender, name, and/or pronoun;

- New rules regulating an employer's ability to inquire about an individual's gender and record this information;
- New rules regarding physical appearance, grooming, and dress standards that make it unlawful to impose upon an employee any physical appearance that is inconsistent with the individual's gender identity;
- The inclusion of the term "transitioning" or "transitioned" as a new form of existing gender expression; and
- Many revisions to the FEHA regulations to include gender-neutral language throughout.

The amendments to the FEHA also include several new rules for restrooms and other facilities. Employers are required to use gender-neutral signage such as "Restroom," "Unisex," or "Gender Neutral" for single-occupancy facilities. Employers are also required to provide feasible alternatives to ensure employees' privacy such as locking toilet stalls,

staggered schedules for showering, and shower curtains—but cannot require employees to use a particular facility. Employers are prohibited from requiring an employee to undergo medical treatment or provide documents to use facilities designated for use by a particular gender.

Employers should also keep in mind Title 24 of the California Code of Regulations, the law requiring all single-user toilet facilities in any business, establishment, place of public accommodation, or state or local government agency to be identified as an all-gender toilet facility by appropriate signage.

### **Mandatory Transgender Rights Poster & Training**

SB 396, which took effect on **January 1, 2018**, requires employers to inform employees about transgender rights and train employees regarding sexual

harassment. The law requires employers to display a poster developed by the Department of Fair Employment and Housing regarding transgender rights in a prominent and accessible location in the workplace. The poster defines terms such as transgender, gender identity, gender expression and gender transition, discusses the right of employees to use facilities that corresponds to their gender identity, and explains the importance of honoring an employee's gender identity and expression. SB 396 also requires employers with 50 or more employees to include, as a component of the mandatory two-hour harassment training for all supervisory employees, harassment based on gender identity, gender expression, and sexual orientation. An English example of that poster can be found [here](#), and a Spanish version is available [here](#).