

New York State Division of Human Rights Adopts Regulations Prohibiting Discrimination Against Transgender Individuals

As reported in the [December 23, 2015 New York Labor and Employment Law Report](#), although neither the federal nor state law expressly prohibits discrimination on the basis of gender identity or expression, Governor Cuomo bypassed the legislative process and urged the New York State Division of Human Rights to issue regulations that will interpret the state's anti-discrimination prohibitions to cover transgender individuals. Just this week, the New York State Division of Human Rights adopted those [regulations](#). The regulations, which became effective on Wednesday, make discrimination or harassment against transgender applicants and employees unlawful, and require employers to accommodate transgender individuals who have been diagnosed with a medical condition referred to as "gender dysphoria" – a medical condition related to an individual having a gender identity different from the sex assigned to him or her at birth.

In addition, the New York City Commission on Human Rights recently issued a [guidance document](#) on what constitutes discrimination against transgender people under the New York City Human Rights Law. The Commission's guidance provides numerous examples of employer actions that violate the NYCHRL, including failure to use an individual's preferred name, pronoun or title, denying transgender employees the use of restrooms consistent with their gender identity, and even enforcing dress codes that make differentiations based on sex or gender. The Commission's recent guidance also announces much more strict penalties for transgender discrimination. Under the NYCHRL, civil penalties can range from \$125,000 to \$250,000 for violations that are deemed to be "willful, wanton or malicious." The Commission announced that, among other factors, it will consider the lack of an adequate discrimination policy as a factor in assessing penalties.

Employers should review and revise their EEO and anti-harassment policies in light of these recent changes. Employers should also consider taking steps to educate and train their employees regarding these new requirements.

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