

CLIENT NEWS BRIEF

Proposed Amendments to FEHA Regulations Regarding Transgender Identity and Expression

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California's Fair Employment and Housing Council (Council) is set to consider amendments to the Fair Employment and Housing Act (FEHA or Act) that the Council says will more explicitly spell out existing protections for transgender workers and bring those protections in line with federal guidance and state law.

The Council will discuss the proposed amendments [at its June 27 meeting](#) and is now accepting public comment. A date to consider approval of the proposed amendments – or some version of them – has not yet been announced.

The Act, which is spelled out in Government Code sections 12900 et. seq. and implemented by the California Code of Regulations title 2, division 4.1, subchapter 2, article 5, already bars employers from discriminating against employees and applicants on the basis of gender identity or expression. In its initial statement of reasons for the proposed changes, the Council said its goals are to clarify an "often misunderstood and increasingly prominent facet of the law" and to better align FEHA with state law and federal guidance.

The list of proposed changes includes:

- **Gender-neutral language.** Overall, the Council proposes to use gender-neutral language and eliminate dichotomous references to gender in the Act, substituting "individual" for "male" or "female" and "opposite sex" with "different sex." In addition, the term "transitioning" is proposed to be included within the definitions found in section 11030 as "the process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth," which "may or may not include changes in name and pronoun, bathroom, facility usage, participation in activities like sports teams, hormone therapy, sex reassignment surgery, or other medical procedures."
- **Working Conditions.** The Council proposes to expand employees' equal access to workplace facilities to include locker rooms, dressing rooms, dormitories and restrooms and to establish employers' obligations to make such facilities available. The proposed amendments provide that employees must be permitted to use facilities that correspond to their gender identity or expression, regardless of the employee's assigned sex at birth. If individual facilities are not available, employers are to provide alternatives to ensure privacy, such as locking toilet stalls and shower curtains. The proposed amendments also prohibit an employer from requiring an employee to use a particular facility and from requiring transitioning employees to undergo, or provide proof of, any particular medical treatment in order to use facilities designated for a particular gender. Employers with single-occupancy facilities under their control will have



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to use gender-neutral signage, such as "Restroom," "Unisex," "Gender Neutral," or "All Gender Restroom."

- **Physical Appearance, Grooming and Dress Standards.** Clarifying employers' existing obligations under FEHA, the proposed amendment would only permit employers to impose physical appearance, grooming or dress standards if they serve a legitimate business purpose and do not discriminate based on an individual's sex, gender, gender identity or gender expression. The proposed amendment also adds that employers may not require individuals to "dress or groom themselves in a manner inconsistent with their gender identity or gender expression."
- **Recording of Gender and Name.** The Council proposes provisions that will make it unlawful to require an applicant or employee to disclose whether the individual is transgender, on a job application or otherwise. In situations where a job application requires an individual to identify as male or female, an employer cannot consider fraudulent or a misrepresentation, an applicant's designation of a gender inconsistent with the applicant's assigned sex at birth or presumed gender.

Under the proposed amendments, employers will also be required to honor employees' requests to be identified with a preferred gender, name and/or pronoun, except under limited circumstances. Acknowledging that the severe or pervasive misuse of an employee's name could be sufficient to create a hostile or abusive work environment, the Council deemed this amendment necessary to prevent the occurrence of sexual harassment.

- **Additional Rights.** Finally, the proposed amendments prohibit the denial of employment based wholly or in part on an individual's gender identity or gender expression, as well as discrimination against an individual who is transitioning or has transitioned. If adopted, it will be unlawful for employers to inquire or request documentation or proof of an individual's sex, gender, gender identity or gender expression as a condition of employment, except under limited circumstances.

If adopted as currently written, the amendments will require employers to review and potentially revise their existing policies and standards, and to make changes to facility access, signage and privacy considerations. FEHA defines an employer as "any person regularly employing five or more persons; any person acting as an agent of an employer, directly or indirectly; the state or any political subdivision thereof."

Prior to adopting its proposed amendments, the Council will consider comments submitted in writing or presented at the June 27 public hearing. Written comments may be submitted via e-mail to FEHCouncil@dfeh.ca.gov until 5 p.m. June 27.

If you would like additional information about the proposed FEHA changes or your responsibilities with respect to transgender workers, please contact the authors of this Client News Brief or an attorney in one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).