



Delaware Enacts Gender Identity Nondiscrimination Law

Date: 6.24.2013

Delaware Governor Jack Markell has signed the Gender Identity Nondiscrimination Act, making Delaware the 17th state to enact law prohibiting gender identity discrimination. The Act adds gender identity to the list of protected classes under Delaware law prohibiting discrimination and hate crimes. Effective immediately, the law (S.B. 97) bans discrimination on the basis of gender identity in employment, places of public accommodation, housing and public works contracting. The law also provides for increased penalties under the hates crimes law against a person who intentionally selects the victim of a crime because of the victim's gender identity.

Employment Discrimination

The law prohibits employment discrimination on the basis of gender identity. "Gender identity" is defined as "gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity." This expanded definition of gender identity is significant for employers in that the Delaware legislation does not require medical proof of any physical changes and places the burden on the employer to accommodate transgender requests for transition based on a consistent presentation by the transgender employee. The law further provides that "gender identity shall not be asserted for any improper purpose." It is unclear from the statute what would constitute an "improper purpose."

The Act permits employers to require employees to adhere to reasonable, lawful workplace appearance, grooming and dress standards; provided, however, that employers allow employees to appear, groom and dress consistent with their gender identity.

Public Accommodation

Places of public accommodation, such as health clubs and gyms, also are prohibited from discriminating on the basis of gender identity in their facilities or privileges. However, they may provide reasonable accommodations based on gender identity in areas of facilities where disrobing is likely, such as locker rooms or other changing facilities. Such accommodations may include a separate or private place for the use of persons whose gender-related identity, appearance or expression is different from their assigned sex at birth, provided that the accommodations are not inconsistent with the gender-related identity of such persons.

Delaware employers should review their non-discrimination policies, gender transition guidelines and practices to identify areas that may require revision for compliance with the new law. In addition, we strongly recommend implementing training on the ever-evolving laws regarding gender identity or expression.

If you have any questions about this or other workplace developments affecting your business, please contact Michelle E. Phillips, at (914) 514-6147 or PhillipM@jacksonlewis.com, or the Jackson Lewis attorney with whom you regularly work.

© 2013, Jackson Lewis LLP. This Update is provided for informational purposes only. It is not intended as legal advice nor does it create an attorney/client relationship between Jackson Lewis LLP and any readers or recipients. Readers should consult counsel of their own choosing to discuss how these matters relate to their individual circumstances. Reproduction in whole or in part is prohibited without the express written consent of Jackson Lewis LLP.

This Update may be considered attorney advertising in some states. Furthermore, prior results do not guarantee a similar outcome.

Jackson Lewis LLP represents management exclusively in workplace law and related litigation. Our attorneys are available to assist employers in their compliance efforts and to represent employers in matters before state and federal courts and administrative agencies. For more information, please contact the attorney(s) listed or the Jackson Lewis attorney with whom you regularly work.

practices

Management Education