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## Massachusetts eAuthority

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### Massachusetts Passes Legislation to Protect Gender Identity

by [Mark H. Burak](#)

On November 16, 2011, the Massachusetts legislature passed a transgender anti-discrimination bill, which Governor Deval Patrick is expected to sign into law this week. If the bill is signed by the Governor, "gender identity" will become a protected category under Massachusetts non-discrimination statutes. The new law also will add gender identity as a protected category to several laws intended to protect people from hate crimes and harassment.

The new law will have significant implications for employers. Gender identity under the new law is defined as:

. . . a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, as part of a person's core identity; provided however, gender-related identity shall not be asserted for any improper purpose.

As a result of this new law, Massachusetts will provide explicit protection for gender identity. Based on the language of the statute, this definition appears to protect both those who have undergone sex reassignment procedures and those who express their gender in a manner not "traditionally associated with the person's physiology or assigned sex at birth."

The Massachusetts Commission Against Discrimination has issued several decisions in the past that provide some protection for gender expression or transgender persons based on existing statutory protections, such as sexual orientation, gender or disability. Additionally, some lower level Massachusetts courts have issued decisions that suggest protections for gender identity based on similar theories but the

law is at best unsettled. The new legislation clarifies an otherwise murky area of the law for Massachusetts employers and provides broad based protection for gender identity.

If the law is signed as expected, Massachusetts will be among a small handful of states providing protection for gender-related identity or transgender persons. As a result of this proposed change, we recommend that Massachusetts employers amend their employment policies to specifically add "gender identity" as a protected category. These revisions should include changes to equal employment opportunity and anti-harassment policies. We also suggest that employers include gender identity as part of an employer's anti-harassment/respectful workplace training programs to sensitize workforces to gender identity issues.

If passed, the new law will take effect on July 1, 2012.

### **Additional Information**

If you have any questions regarding this bill or its potential impact on your workplace, contact the Ogletree Deakins attorney with whom you normally work or the Client Services Department at 866-287-2576 or via email at [clientservices@ogletreedeakins.com](mailto:clientservices@ogletreedeakins.com).