

EQUAL ACCESS TO PUBLIC RESTROOMS

When you gotta go, you gotta go. Whether at work, in a restaurant or passing through a train station, pretty much everyone needs to stop into a restroom at some point while away from the comforts of home. But this simple routine is anything but that for many transgender and gender-nonconforming (TGNC) people.

Transgender is an umbrella term used to describe people whose gender identity, one's inner sense of being male or female, differs from their assigned or presumed sex at birth; gender-nonconforming people don't meet society's expectations of gender roles. For both groups, even just walking through the door of a public bathroom can be a stressful, scary experience. The mere possibility of hostile remarks from other bathroom goers, questions from store owners or mall security or arbitrary restrictions from employers can be so frightening that many just "hold it."

TGNC people get harassed in other situations too, but public restrooms tend to invite extra scrutiny of people's appearance based on comparisons to stereotypes about how men and women are *supposed* to look or act.

The solution is quite simple, in theory: Everyone should use the restroom that matches their gender identity, regardless of whether they are making a gender transition or appear gender-nonconforming. But the realities of anti-transgender malice and a widespread lack of understanding about transgender people's lives can complicate things.

Litigation in this area has been especially tough, with mixed outcomes. Courts do not always grasp the importance of this issue and have sometimes seen restrooms as outside the realm of anti-discrimination laws, even though not being able to use an appropriate restroom can cut off access to a job or to a range of public facilities.

This fact sheet is intended to help you advocate for what is right by using information about the medical and historical context of gender transition and practical ideas for improving access to public accommodations.

MY STORY A HIGHWAY REST STOP NIGHTMARE

Danica Ali, 36

"I was in Connecticut at a rest stop. I was coming back from New Haven with some friends of mine and we were on I-95. We stopped to get something to eat and use the restroom—just like everybody else.

"I went in, and this lady—the manager or something—pulled me aside and said she wanted to see my ID to see if I'm male or female. She had this guy with her—I don't know if he was security.

"I asked her, 'Who are you?' She said she didn't have to tell me. And I told her, 'I don't have to give you my driver's permit!' She said, 'If you don't show me your ID, I'm going to call the police and say that a man is using the female restroom.' I took out my ID and I showed her my ID and it said 'female.'

"I was so upset! I just walked right out and went to the car."



FAQ

Answers to Some Common Questions about Equal Access to Public Restrooms

Q. How do you know which bathroom a transgender person should use?

A. A transgender person should use the restroom that corresponds to his or her gender identity.

The medical community (and increasingly, employers, schools and courts) now recognize that it is essential to the health and well-being of transgender people for them to be able to live in accordance with their internal gender identity in all aspects of life—and that restroom usage is a necessary part of that experience.

Q. What if someone doesn't look masculine or feminine enough to use a particular restroom?

A. There is no rule that a person must look a certain way to use a certain restroom. This kind of “gender policing” is harmful to everyone, whether a transgender person, a butch woman, an effeminate man or anyone dressed or groomed in a way that doesn't conform to someone else's gender standards. Moreover, courts have increasingly found that discrimination against transgender people is sex discrimination, so it's not acceptable to institute different kinds of bathroom rules for transgender and non-transgender people.

Q. Which bathroom should a transgender person use if he or she hasn't had genital surgery?

A. The details about whether or not someone has had genital reconstructive surgery, also called sex reassignment surgery (SRS), don't tell you anything about gender identity or someone's right to use a certain bathroom—and asking about it is a major invasion of privacy, as it involves personal medical information.

It could also be illegal: For instance, if employers were to impose such a “genital standard” for bathroom use, they would need to inquire about the genitals of everyone in that workplace. Imagine the privacy concerns that would raise!

The fact is, however, that very few transgender people seek SRS, whether because of cost, personal beliefs, concern about surgical risks or the limitations of available procedures. In a recent survey of 6,450 transgender people in the U.S., conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force, fewer than 20 percent of transgender women had undergone genital surgery, and fewer than 5 percent of transgender men had.

The U.S. State Department recently recognized this situation in an official way by abandoning requirements that passport applicants document surgical procedures to change the gender listed.

Q. Don't unisex bathrooms leave women more vulnerable to being harassed or attacked by men than gender-segregated bathrooms do?

A. This is an argument based completely on a myth: Gender-segregated bathrooms are no more “safe” for non-transgender women than unisex bathrooms, and there are already laws protecting people from criminal conduct in public restrooms. There have been gender identity protection laws covering public accommodations since the 1970s without any sort of increase in violence. In any case, TGNC people are just as at risk for harassment as non-TGNC women, and usually more so. Providing individual bathrooms can be a solution for dealing with these concerns, however, as long as transgender people are not *required* to use them.

**GOOD
GOVERNMENT**
Sample Cities
and States
that Got It Right

Information from states and cities around the U.S. that are doing a good job of addressing the restroom issue:

WASHINGTON, D.C., ON GENDER-NEUTRAL BATHROOM SIGNS: “All entities... with single-occupancy restroom facilities shall use gender-neutral signage for those facilities (for example, by replacing signs that indicate ‘Men’ and ‘Women’ with signs that say ‘Restroom’).”

IOWA LAYS OUT THE MATTER ESPECIALLY WELL: “Just as non-transgender individuals are entitled to use a restroom appropriate to their gender identity without having to provide documentation or respond to invasive requests, transgender individuals must also be allowed to use a gender-identity appropriate restroom without being harassed or questioned.”

WASHINGTON STATE PUTS THE ONUS ON THE BOSS: “All employers need to find [restroom] solutions that are safe, convenient and respect the transgender employee's dignity.”

“We stopped to get something to eat and use the restroom—just like everybody else. —DANICA ALI”

Q. Are individual or unisex restrooms better for transgender people than segregated bathrooms?

A. Transgender people should not be singled out as the only employees using any particular restroom. But providing individual and/or unisex restrooms is not a bad idea, because they do provide more options for TGNC people, as well as for people with young children and people with disabilities who need help from someone of a different gender.

Q. What should an employer do when a non-transgender employee complains about being uncomfortable sharing bathrooms with a transgender employee?

A. Employers need to offer an alternative to the complaining employee in such a situation, such as an individual restroom. It isn't the job of the transgender person to do the accommodating. (This was affirmed in a 2002 Minnesota federal appeals court ruling in the case of *Cruzan v. Special School District, #1*.)

Q. Are employers allowed to tell an employee to use a restroom that does not match the person's gender identity or presentation?

A. Employers should make the workplace fair for all employees. The U.S. Occupational Safety and Health Administration (OSHA) forbids employers from placing “unreasonable” restrictions on restroom access. Also, by insisting that someone use the wrong bathroom, an employer is both violating the employee's privacy by singling him or her out, and outing the person as transgender.

Q. Is it okay to propose that a company's restrooms be more trans-friendly?

A. Yes! Advocacy is the most important part of the fight for transgender rights. And if employers adopt pro-trans policies proactively, instead of waiting for a transgender person to pave the way, there's much less chance of having problems down the line.

(FAQ continues next page)

HEALTH

Two Reasons Why Bathroom Access Is Also a Health Issue

1. USING APPROPRIATE RESTROOMS IS AN ESSENTIAL PART OF TRANSITIONING

Gender transition is recognized by the medical community as benefiting a transgender person's psychological well-being and sense of self-fulfillment. One critical aspect of transition, according to the medical protocol set by the World Professional Association for Transgender Health, is to ensure that a transgender person is able to live and be seen and treated by others in a manner consistent with the person's gender identity. Getting used to using the appropriate restroom is an important part of this process—which is known as the Real Life Experience. Moreover, transgender people must take this step well before proceeding—if at all—to medical interventions involving hormones or surgery.

2. “HOLDING IT” MAY BE HAZARDOUS TO YOUR HEALTH

According to the U.S. Occupational Safety and Health Administration (OSHA), so-called “delayed voiding” is unhealthy, and workplace policy may not encourage it. This is not to mention the dehydrating effects of trying to avoid using restrooms by limiting intake of liquids, another common strategy for TGNC people navigating uncomfortable bathroom situations in the workplace and at other public accommodations.

HISTORY

Public Restrooms Have Always Been a Civil Rights Battleground

Bathrooms have played a role in virtually every civil rights movement in the United States. Controlling the way people use restrooms—or are not allowed to use them at all—has been a tool for degrading people of color, excluding women from traditionally male jobs and keeping people with disabilities from accessing public accommodations and employment.

The public humiliation often involved makes it especially hard to confront bathroom discrimination and educate the general public. But the same basic principle holds true for transgender people and those who have confronted this issue before: Everyone deserves to be treated with respect and dignity, including while involved in such basic human activities as using a public restroom.

Q. Which bathroom is appropriate for someone whose identification doesn't match his or her gender identity?

A. Asking someone to show ID to use a particular restroom is invasive and unnecessary. TGNC people know which bathroom is consistent with their gender identity.

Also, it's not that easy for transgender people to change identity documents. Often, you need to hire an attorney, which is financially out of reach for lots of people. And some states will only change ID for those who have had SRS, even though only a minority of trans folks choose or are able to access surgery. Some states, like Tennessee and Idaho, prohibit transgender people born in those states from ever changing the gender on their birth certificates, even if they have SRS.

OFFICE RULES

Setting an Example:
A Major U.S. Company
that Got It Right

An excerpt from the Workplace Gender Transition Guidelines at Ernst & Young, among the largest and most respected accounting firms in the world:

"A transitioning individual should use the facility based on their current gender presentation: specifically, their reassigned gender following commencement of the 'real life experience' and from that point forward. Co-workers who have personal concerns about sharing a restroom or locker room with a transgendered individual should be invited to have an honest discussion with an appropriate People Team member or a representative from EY/Assist."

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, Suite 1500, New York, NY 10005-3904. If you feel you have experienced discrimination, call our Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help.

TIPS

IF YOU'RE BEING HASSLED IN A RESTROOM ABOUT YOUR GENDER EXPRESSION...

- 1** Stay calm so that you can read the situation—and figure out whether or not you're safe. You can always leave the scene if you feel threatened and come back later with a friend to file a complaint.
- 2** Report the incident to a manager, owner or someone in charge. Explain to them that you are using the restroom that matches your gender identity.
- 3** Educate. Show them this toolkit! Explain that transgender people deserve to be treated with respect and dignity and are harmed by being denied access to appropriate restroom facilities.
- 4** If you are still denied access to the appropriate bathroom, you can file a complaint with your local or state anti-discrimination agency. Denial of access to the appropriate bathroom for transgender people could be considered sex discrimination under the law. You may also live in one of the dozen or so states or over 125 cities and counties where there are specific protections against discrimination on the basis of gender identity.
- 5** Let us know. Lambda Legal's Help Desk (toll-free: **866-542-8336** or www.lambdalegal.org/help) takes calls from transgender and gender-nonconforming people who have experienced discrimination.