

District Requirements in Public Accommodations - Gender Identity and Expression

- Fact Sheet -



Introduction

Transgender and gender non-conforming individuals living and working in the District of Columbia often face challenges when accessing or attempting to access a bathroom or other gender specific facilities, such as locker rooms, and showers. At times, these challenges can even escalate to violence. To protect against and prevent such obstacles, District law requires two things with regard to access to public facilities: (1) single-occupancy bathrooms must be gender-neutral; and (2) facility managers and personnel must respect a person's restroom choice based on their gender identification or expression. More broadly, gender identity and expression are protected traits under District law and this means that discrimination in employment, housing, public accommodations or educational institutions is prohibited in our city. This fact sheet provides an overview of the District of Columbia Human Rights Act and the accompanying regulations so that District agencies, offices, and contractors working within and/or on behalf of the District can better understand the legal requirements and ensure that individuals are treated fairly and in accordance with the law.

What does the DC Human Rights Act require?

Generally, the regulations implementing the District of Columbia Human Rights Act provide: "It shall be unlawful for any person or entity, including agencies of the District of Columbia government and its contractors, to discriminate against a person in employment, housing, public accommodations, or educational institutions on the basis of that person's actual or perceived gender identity or expression." 4 DCMR § 801.1. Specifically, the regulations state that all single-occupancy restroom facilities must be gender neutral and use gender-neutral signage (i.e., replace "Men" or "Women" signs with "Restroom"). See 4 DCMR § 802.2. Additionally, it requires that access to all facilities must be consistent with a person's gender identity or expression, not their assigned sex at birth. See 4 DCMR § 802.1. This means that individuals must be permitted to use a facility of their choice in accordance with their gender identity or expression. For instance, if an individual, who identifies or presents themselves as a woman, wishes to use the Women's restroom, they must be permitted to do so even if the individual were to be perceived differently. Thus, under District laws, denying access to any restroom, or other gender specific facility that is consistent with a person's gender identity or expression, is unlawful.

Where does the law apply?

All District agencies, offices, and contractors working within and/or on behalf of the District must comply with the requirements under the Human Rights Act and the accompanying regulations.¹ This means that all government buildings must allow individuals to use gender-specific restrooms and other gender-specific facilities that are consistent with their gender identity or expression.

- continued on next page -

¹ Although this fact sheet is designed to provide District agencies, offices, and contractors with a better understanding of the District's prohibitions of gender identity and expression discrimination, it is important to note that these prohibitions reach far beyond District government facilities. As noted above, 4 DCMR § 801.1 provides that it shall be unlawful for any person or entity to discriminate against a person in employment, housing, public accommodations, or educational institutions on the basis of that person's actual or perceived gender identity or expression. For purposes of the District of Columbia Human Rights Act, "entities" include all employers, housing providers, public accommodations, and educational institutions, in addition to government agencies. See 4 DCMR § 899.1.

This also means that all single occupancy restrooms must be gender-neutral and use gender-neutral signage, such as “Restroom,” rather than “Men” or “Women.” Additionally, even if a gender-neutral restroom is available, individuals still maintain the right to use the restroom and other gender-segregated facilities that they identify with, and with which they are most comfortable. For example, individuals have the right to use the following facilities consistent with their gender identity or expression: **locker rooms, dressing rooms, including those located within District of Columbia Public Schools,² homeless shelters, group homes, educational institutions, and District offices and bathrooms.**

Simply put, a person who identifies as, or presents as, a man should be permitted to use a men’s restroom, and a person who identifies as, or presents as a woman, should be permitted to use a women’s restroom. Refusing to allow individuals to use bathrooms or facilities that are congruent with their gender identity or expression is a form of discrimination under the District of Columbia Human Rights Act.

When must the laws be enforced?

All District agencies, offices, and contractors working within and/or on behalf of the District shall follow the requirements of the District of Columbia Human Rights Act at **all** times. *See D.C. Code § 2-1401.01 et seq.* Additionally, agencies, offices and contractors shall clearly and explicitly post and communicate District of Columbia’s laws regarding gender identity or expression to all management, employees, and volunteers as required by the law. Such postings shall include notices setting forth the human right laws, the protections afforded to one’s gender identity and expression, and information pertinent to the filing of a complaint. *See D.C. Code § 2-1402.51; 4 DCMR § 801.2.*

² For detailed information on the District of Columbia Public School’s transgender and gender-nonconforming policies, please refer to the guidance released June 2015, found at: <http://dcps.dc.gov/publication/dcps-transgender-and-gender-non-conforming-policy-guidance>.