

WASHINGTON STATE HUMAN RIGHTS COMMISSION

Frequently Asked Questions Regarding WAC 162-32-060 Gender-segregated Facilities



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Gender-segregated Facilities

In 2006, the Washington State Legislature added sexual orientation and gender identity to the list of protected classes covered under the Washington Law Against Discrimination (WLAD, RCW 49.60). The law prohibits discrimination against any person based on his or her sexual orientation or gender identity. The Washington State Human Rights Commission (WSHRC) is responsible for administering and enforcing the Law Against Discrimination, which grants rulemaking authority to the WSHRC. To begin the rulemaking process, the WSHRC sought public input into potential rules related to sexual orientation and gender identity by holding four workgroups across the state in 2012. In June 2015, there was a public hearing and comment period. The final rules, covering a variety of issues related to sexual orientation and gender identity non-discrimination, went into effect in December 2015. The rules include a provision that transgender individuals cannot be required to use a gender segregated facility that is inconsistent with their gender identity. The rules do not give protections to anyone who accesses gender segregated facilities under false pretense, nor do the rules protect anyone who acts in an illegal or inappropriate manner. If you have concerns or want to discuss changes to the law, please contact your state legislator. Below is a list of frequently asked questions about the rules.

Q: Who is protected under the rules?

A: The rules protect individuals of all sexual orientations and gender identities, including persons whose gender assigned at birth does not conform to their gender identity. The Legislature defined "gender expression or identity" broadly in the law (see RCW 49.60.040(26)). The definition in the law does not limit protections to persons who have certain anatomical characteristics, who have had gender reassignment surgery, or who have undergone any other medical treatment.

Q: To what businesses do the rules apply?

A: In an employment situation, the rules apply to all employers who employ eight or more employees. In a public accommodation situation, the rules apply to all places of public accommodation, including (but not limited to) schools, gyms, public facilities, stores, restaurants, and swimming pools, and the gender segregated facilities within those places of public accommodation.

Q: Can men now go into women's bathrooms or locker rooms?

A: No. Only females can go into women's bathrooms or locker rooms in a gender segregated situation. This includes transgender females who identify as female. The rules do not protect persons who go into a restroom or locker room under false pretenses. For example, if

a man declares himself to be transgender for the sole purpose of entering a women's restroom or locker room, then the rule would not protect him.

Q: How does a business know if someone is really transgender or is just pretending to be transgender in order to gain access to gender segregated facilities?

A: The rules do not prohibit asking legitimate questions about a person's presence in a gender segregated facility. It is suggested that these questions be asked in a polite and non-confrontational manner. In addition, it is extremely unlikely that someone who is pretending to be transgender, and who is ejected from a facility, will take the steps of filing a complaint or a lawsuit against that facility. If they do so, then the investigation conducted by an enforcement agency will uncover the fact that the person was not being honest about their status, and thus is not protected under the law against discrimination. Any individual who fraudulently claims to be transgender for the purpose of entering a gender segregated facility in order to engage in illegal activity may also be subject to criminal prosecution.

Q: What will about the potential for increased crime, such as child molestation, sexual assault, and voyeurism?

A: This rule does not protect behavior that is criminal or inappropriate. Anyone, regardless of their transgender status, who is behaving inappropriately in a restroom or locker room, can be required to leave. Law enforcement should be called whenever criminal behavior is observed or suspected. There are many states and cities that have enacted similar rules related to use of gender segregated facilities. There is no evidence that criminal activity has increased or personal safety has decreased in these jurisdictions. However, there is evidence that requiring transgender individuals to use restrooms or locker rooms contrary to the gender with which they identify does increase their own personal safety risks. They are much more likely to be victimized or assaulted when forced to use the facility that does not conform to their gender identity.

Q: Do businesses need to change bathrooms or locker room to unisex areas?

A: No.

Q: Do businesses need to add private or gender neutral facilities?

A: The rules do not require businesses to make any changes or to add additional facilities; it is understood that this could incur costs upon the businesses, and this was determined not to be within the scope of the rules. Businesses are encouraged to provide private areas for changing or showering whenever feasible. If there is no separate area that can be set aside for privacy, businesses may wish to explore installing partitions or curtains for persons desiring privacy.

Q: Does this rule apply to schools?

A: Schools, except those maintained by religious or sectarian institutions, are covered by these rules. The Office of Superintendent of Public Instruction has provided guidance to school districts that is consistent with these rules. Schools should make efforts to provide private restroom, locker room, and shower areas to any student who desires privacy.

Q: What can an individual do if they do not wish to share gender segregated areas in a situation that makes them uncomfortable?

A: If you are uncomfortable because of another person's inappropriate behavior or actions, immediately report that behavior, either to the managers of the facility, or, if it is criminal behavior, to the police. You do not have to deal with inappropriate or illegal behavior from anyone. If you are uncomfortable because of privacy concerns, whether you are transgender or not transgender, you will have to make your own decision about what to do and what decision might be within your comfort zone, while allowing the business to comply with the law.

Q: Why did the Human Rights Commission decide to impose this new law?

A: This is not a new law. The WSHRC is an administrative agency, and cannot pass laws. The Washington State Legislature passed the law that prohibits discrimination based on a person's sexual orientation or gender identity in 2006, and those protections became part of the Washington Law Against Discrimination. The WSHRC is responsible for administering and enforcing that law by investigating complaints of discrimination brought under the WLAD. Since the time the 2006 law went into effect, the Human Rights Commission has been enforcing it in a manner that provides equal access for transgender persons to the gender-segregated facility with which they identify. Now there are rules in place that explain how the law is interpreted and enforced by the Human Rights Commission. Those rules are consistent with how the Human Rights Commission has been enforcing the law since 2006 and consistent with the information that has been provided to businesses and with written guidance available on our website.

Q: Did people have an opportunity to provide input before the rules were put into place?

A: Yes. The process for agency rulemaking is set out in the law, and the Human Rights Commission followed this process. To begin the dialogue, the Human Rights Commission advertised and invited people to four workgroups held across the state in 2012 to get input and ideas from the public about what the rules should include. From these sessions, the draft rules were formed. When the issue of marriage equality (which had an impact on language in the rules) was settled by the U.S. Supreme Court, the Human Rights Commission prepared for the public comment period on the draft rules. Notice was properly made in the Washington State Register. There was a public hearing for verbal comments and opportunity to send in written comments, in June 2015. From these comments, the rules were finalized. During the public comment period, not a single objection or fear was raised about the issue of transgender individuals using the gender segregated facility with which they identify.