

CLIENT ALERT – JANUARY 2012

New Legal Protections for Transgender Individuals in Massachusetts

Massachusetts Governor Deval Patrick has signed into law “An Act Relative to Gender Identity,” also known as the “transgender equal rights law,” which expands Massachusetts anti-discrimination laws to protect from discrimination against transgender individuals in employment, education, housing, and credit. The legislation makes “gender identity” a protected class alongside others such as race, color, religious creed, national origin, ancestry, sex, age, disability, mental illness, sexual orientation, and genetics. The legislation also expands the Massachusetts hate crimes statutes to add “gender identity” as a protected class. The new law will go into effect July 1, 2012.

1. What is Gender Identity?

The new law defines “gender identity” 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.” A person may prove his or her gender identity by demonstrating “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.” The law therefore appears to protect not only those individuals who have had medical or psychological counseling or care related to their gender identity, but also those who through their appearance (such as clothing) or behavior express a sincere gender-related identity that is different from “that traditionally associated with the person’s physiology.”

2. What Does This Mean for Massachusetts Employers?

The Massachusetts Commission Against Discrimination and Massachusetts courts have previously recognized transgender discrimination complaints filed under other protected classes, such as sex. The express inclusion of gender identity in the state’s non-discrimination and hate crime laws will now codify the scope of protection. Covered employers are prohibited from discriminating against transgender individuals in hiring, discharging, compensation, and in the terms, conditions or privileges of employment. They may not retaliate against a transgender individual for engaging in protected activity (like filing a discrimination complaint).

By July 1, 2012, employers should revise their employment application forms, policies (including equal employment opportunity, anti-discrimination and anti-harassment policies), employee handbooks, and any other such documents to expressly include “gender identity” as a protected class. In addition, employers should ensure their managers and supervisors understand the protections under the transgender equal rights law, and should consider taking the opportunity to remind all employees of the importance of non-discriminatory policies and practices.

If you would like to speak to someone about the new law or any other employment matter, please contact Diane DeGiacomo, Chair of our Employment Law Group.