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East Coast

New Connecticut Law Requires Retail Establishments to Offer Employee Restrooms to Customers with Medical Conditions

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By:

[Kristi E. Mackin](#)

[Charlotte K. McCluskey](#)

Effective October 1, 2009, retail establishments in Connecticut will be required to allow customers with eligible medical conditions access to employee-only restrooms, provided certain conditions are met. For purposes of the Act, a *customer* is broadly defined as "an individual who is lawfully on the premises of a retail establishment." A *retail establishment* includes any business that is open to the general public for the purpose of selling goods or services, and a *restroom* is any room that includes a toilet.

In recognition of concerns about safety and security, the Act balances customers' needs with those of the establishment. For example, access is only required if the employee-only restroom is maintained in "reasonably safe manner," and the request is during normal business hours. Also, the following four conditions must be met:

1. The customer must have written evidence from a licensed health provider that he or she suffers from an *eligible medical condition*, which is defined as "Crohn's disease, ulcerative colitis, inflammatory bowel disease, irritable bowel syndrome, celiac disease or a medical condition that requires use of an ostomy device."
2. A public restroom is not immediately accessible to the customer;
3. Three or more employees of the retail establishment are working at the time

of the request; and

4. The employee restroom is located in an area of the retail establishment that does not present an obvious risk to the health or safety of the customer or an obvious security risk to the retail establishment.

The Act also seeks to limit liability to non-employees for injury resulting from the use of an employee restroom, providing that the injury is not caused by the establishment's gross misconduct or wanton negligence and the injury occurs in an area normally not accessible to nonemployees. (The Act does not address injury to employees, and workers' compensation remains the employee's remedy for physical injuries incurred at work). Notably, the Act does *not* require retail establishments to make any physical changes to their premises, but establishments should take proactive action to make sure that pathways are clear and unobstructed and to remove any easily remedied dangers in the area. Violations of the Act will be considered an infraction.

What Does this Mean for Retail Employers in Connecticut

The majority of retail establishments will probably not feel a significant change as a result of the Act, as most establishments in Connecticut either maintain customer restrooms or have access to a public facility. For those impacted, however, the Act poses some compliance uncertainties. For example, what will be considered sufficient documentation for an eligible medical condition? How close does a public restroom have to be in order to be considered "immediately available," and who makes that determination? How "obvious" does an "obvious security risk" have to be? Can an establishment restrict use by a customer abusing restroom facilities or causing damage? Given the nature of the law, it seems unlikely that interpretative guidance will surface any time soon, but it is expected that the Act will be liberally construed in favor of qualifying customers.

Thus, retail establishments that may be subject to the Act should identify and clearly document any potential concerns with customer use of employee restrooms in advance of the October 1, 2009, effective date. Most importantly, retail establishments will need to educate employees about the new law, as well as establish any procedures necessary to protect the company's assets (cash registers, merchandise, computer access, etc.) in case of a customer request. Retail establishments subject to the law may want to create a short and "user friendly" usage policy, including a list of eligible medical conditions, which is readily accessible to employees if a request is made.

[Kristi E. Mackin](#) is an Associate in Littler Mendelson's New Haven office. [Charlotte K. McCluskey](#) is a Shareholder in Littler Mendelson's Atlanta office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Ms. Mackin at kmackin@littler.com or Ms. McClusky at cmcllusky@littler.com.

