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GENDER IDENTITY WILL BECOME A PROTECTED CLASS IN MASSACHUSETTS

By Ellen Kearns
Boston Office

The Massachusetts legislature has amended its state anti-discrimination law to prohibit discrimination based on gender identity in employment, insurance, housing, lending, credit and education. The legislation also expanded the state hate crimes law to cover gender identity. The law, entitled *An Act Relative to Gender Identity*, also referred to as the *Transgender Equal Rights Bill*, was signed into law by Governor Deval Patrick on November 23, 2011 and becomes effective on July 1, 2012.

Gender identity, as defined in the new law, refers to “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.” In order to qualify for protection from discrimination based upon gender identity, transgender individuals may demonstrate their gender-related identity with evidence including their medical history, care or treatment of their gender-related identity, a consistent assertion of their gender-related identity, or any other evidence that gender-related identity is part of his or her core identity.

As with members of all protected categories, covered employers are prohibited from refusing to hire, discharging or otherwise discriminating against transgender individuals in their compensation and in their terms, conditions, or privileges of employment. These employers are also forbidden from retaliating against any individual for taking certain actions, such as filing a complaint or objecting to prohibited acts of discrimination.

Despite the previous absence of a specific reference to gender identity or gender expression in the Massachusetts anti-discrimination statute, the Massachusetts Commission Against Discrimination had already recognized that transgender individuals could file complaints under the protected category of sex. Now that the Massachusetts legislature has evidenced a clear intent to protect transgender individuals, employers should take this opportunity to ensure their workplaces are compliant.

Employers are advised to instruct hiring managers and supervisors of the protections that will be extended to transgender individuals in the hiring process and in employment. In addition, employment documents, including applications and handbooks, should be updated to reflect that discrimination or retaliation based upon gender identity will not be tolerated; and employees should be reminded that everyone must

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be treated with respect and evaluated based upon their performance. Employers faced with issues that arise in the workplace concerning gender identity should consult experienced employment counsel for guidance as this area of the law continues to develop.

If you have questions regarding the new legislation or any other labor or employment matter, please contact any member of Constangy's **Boston Office** or the Constangy attorney of your choice.

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