

Gender Identity and Expression Are Now Protected Characteristics Under New York State Law

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On Sunday, February 24, 2019, the Gender Expression Non-Discrimination Act (GENDA) went into effect in the state of New York. The law safeguarded transgender and gender nonconforming people from discrimination by designating gender identity and gender expression as protected characteristics under New York's human rights and hate crimes laws. Other protected characteristics in New York include sex, sexual orientation, race, religion, and disability status.

In January 2019, former Governor Andrew Cuomo signed GENDA into law, following years of advocacy from transgender activists and other LGBTQ community leaders. GENDA prohibits gender identity and expression-based discrimination in the areas of employment, housing, and public accommodations. It is not the first state law to provide such protections. Eighteen other states, as well as the District of Columbia, have similar statutes in place. As of this writing, no analogous federal law exists.

Multiple studies have shown that transgender and gender-nonconforming individuals face disproportionate rates of discrimination and harassment in the workplace. According to the United States Transgender Survey, for instance, 30% of transgender and gender nonconforming workers said they had been terminated, denied a promotion, or harassed at work due to their gender identity.

Employers in New York should review and, if necessary, revise their policies and employee handbooks to conform to the new law. Best practices include the following:

- Ask employees about their preferred pronouns and use those pronouns in every form of communication.
- Allow employees to use their chosen names (even if a legal name change has not been completed) in email addresses, identification cards, and other organizational documents.
- Ensure every employee has access to a restroom that conforms to their gender identity—and consider creating gender-neutral, single-occupancy facilities or stalls.
- Adopt gender-neutral language in any dress code policy, and remove any language that identifies an item of clothing with a specific gender.

To ensure GENDA compliance, employers should speak to their legal advisors as soon as possible. If you have any questions about this law or any other Labor and Employment Law matter, please [contact me at rromeo@offitkurman.com](mailto:rromeo@offitkurman.com) or 347.589.8547.