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Bostock v. Clayton County: LGBT+ Employment Rights Confirmed

What Does Bostock Mean for D.C. Region Employers?

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**Foundation: LGBT+
Employment Rights Before
*Bostock***

Key Terms

- **Gender Identity** is a person's innate, internal sense of their gender.
- **Gender Expression** is the way in which a person presents his, her, or their gender to the outside world.
- **Non-binary** (and similar terms) – An umbrella term for gender identities that do not fit into the binary idea of male or female. Includes but is not limited to:
 - **Gender Fluid** – a person whose gender identity shifts among different genders (time period differs).
 - **Agender** – a person who is genderless.

Key Terms

- **Sexual orientation** is an individual's physical, sexual, and/or emotional attraction to the same or a different gender. Orientations include heterosexual (straight), gay/lesbian, bisexual, pansexual.
- **Transgender** (“trans”) is an umbrella term referring to a person whose gender identity differs from their gender assigned at birth.
- **Cisgender** (“cis”) refers to individuals whose sex assignment at birth corresponds to their gender identity.

Key Terms

Gender transition is the process by which a person modifies their physical characteristics and/or gender expression to be consistent with their gender identity.

Transgender people may *or may not* choose to make social, medical, and/or legal changes to affirm their gender identity, including:

- **Social:** e.g., clothing, pronouns, name, mannerisms, voice
- **Medical:** e.g., hormone therapy, gender reassignment or other surgery
- **Legal:** e.g., changing their name and/or gender on birth certificate, driver's license, etc.

A transgender person who has not made all of these changes is still transgender.

Title VII Of The Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 prohibits discrimination because of **race, color, religion, sex, or national origin.**

- The term “sex” under Title VII applies to discrimination against women because they are women and against men because they are men.

Equal Employment Opportunity Commission (“EEOC”)

- The EEOC defines sex-based discrimination as including discrimination on the basis of sexual orientation and gender identity.

EEOC LGBT Litigation Charges & Trends

- **FY 2013 - FY 2019:**
 - LGBT-related charges steadily increased. From FY 2013 through FY 2019, **10,600 LGBT Charges** were filed and the EEOC recovered **\$29 million**.
 - EEOC data shows that in **FY 2019**, EEOC resolved over **2,000 LGBT charges** (including through voluntary agreements), providing approximately **\$7 million** in monetary relief for workers and achieving changes in employer policies so that discrimination would not recur.
- In December 2012, the EEOC announced in its 2012-2016 Strategic Plan that the "coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions is a top Commission enforcement priority."

State Law Protections

22 states (CA, CO, CT, DE, HI, IL, IO, ME, MD, MA, MN, NH, NV, NJ, NY, NM, OR, RI, UT, VA, VT and WA) and D.C. include **gender identity and/or gender expression** in their employment non-discrimination statutes.

23 states (CA, CO, CT, DE, HI, IL, IO, ME, MD, MA, MN, NH, NJ, NM, NV, NY, OR, RI, UT, VA, VT, WA, WI) and D.C. explicitly prohibit **sexual orientation** discrimination.

Other states prohibit sexual orientation discrimination in public employment only.

State Law Protections: DC, MD and VA

- **D.C.**: The D.C. Human Rights Act has long protected employees from discrimination based on sexual orientation and transgender status.
- **MD**: Maryland's Civil Rights Law has protected employees from discrimination based on sexual orientation since 2001. Gender identity was added in 2014.
- **VA**: Sexual orientation and transgender status were added to the Human Rights Act effective July 1, 2020, along with strengthened enforcement measures. With these changes, Virginia became the first state in the South to enact non-discrimination protections for LGBT+ people.

Price Waterhouse v. Hopkins (1989)

- Hopkins, a female accountant who had been an excellent performer, was passed over for partner. She was advised by certain partners in the firm that she could improve her partnership chances if she would “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”
- She resigned and sued for gender discrimination.
- The U.S. Supreme Court held that treating a woman differently because she failed to conform to her employer’s gender-related stereotypes about how women should look and act was protected from discrimination by Title VII, and that Price Waterhouse had violated Title VII by declining to promote Hopkins for these reasons.

Macy v. Holder (EEOC Apr. 20, 2012)

- Job applicant Mia Macy applied for a job at the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATFE”). When she applied, she presented as male. Shortly thereafter, Macy informed ATFE she was transitioning from male to female.
- ATFE told Macy another applicant had been hired because that applicant was farther along in the background check process.
- Macy filed an EEOC charge alleging that the reasons proffered for not hiring her were pretextual and that the true reason was because of her “sex, gender identity (transgender woman) and on the basis of sex stereotyping.”

Macy v. Holder (Cont.)

- The EEOC reasoned that Macy could establish a viable sex discrimination claim on the ground that:
 - ATFE believed that biological men should present as men and wear male clothing; or,
 - ATFE was willing to hire a man, but not a woman.
- Either way, the EEOC concluded, transgender discrimination is discrimination “based on ... sex” and violates Title VII.

EEOC v. Lakeland Eye Clinic (2014)

- Six months into his employment at the Lakeland Eye Clinic, Brandi Branson started wearing feminine attire to work, including makeup and women's clothing. Co-workers allegedly snickered and rolled their eyes.
- Soon after, Lakeland confronted Branson about her changing appearance. She explained she was undergoing a transition from male to female.
- Following this meeting, the ostracism allegedly intensified. Lakeland's managers and employees made derogatory comments about her appearance, and physicians stopped referring clients to Branson.
- Two months later, Lakeland discharged Branson, telling her that the position was being eliminated. Branson was replaced by a male employee.

EEOC v. Lakeland Eye Clinic (2014)

- The EEOC filed suit on September 25, 2014 in federal court in Tampa. This was one of the first two lawsuits ever filed by the agency alleging sex discrimination against transgender individuals. The other case, *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.* was filed the same day by the EEOC's Indianapolis District Office. (More on Harris in a moment)
- On April 13, 2015 the EEOC announced that the case had settled. Lakeland agreed to pay \$150,000, adopt a new gender discrimination policy, and provide training to its management and employees regarding transgender/gender stereotyping.

Baldwin v. Foxx (EEOC, July 16, 2015)

- EEOC finds for the first time that sexual orientation discrimination is encompassed in Title VII's prohibition on discrimination because of "sex."
- It said, "Indeed, we conclude that sexual orientation is inherently a 'sex-based consideration,' and an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII."
- "Sexual orientation as a concept cannot be defined or understood without reference to sex."

***Bostock*: Decisions Below
and Supreme Court Ruling**

Bostock v. Clayton County, Georgia

11th Circuit 2018:

- In *Bostock*, Gerald Bostock received good work reviews as a child-welfare-services coordinator for Clayton County over his decade-long career.
- In January 2013, Bostock became involved with a gay recreational softball league and actively promoted his employer to league members as a good volunteer opportunity. In the months that followed, Bostock says, his sexual orientation and participation in the softball league were openly criticized by individuals with influence on Clayton County decision makers.
- His employer fired him based on accusations that he mismanaged public money. Bostock claimed the firing was because of his sexual orientation.
- The Eleventh Circuit held that ***Title VII does not apply to discrimination based on sexual orientation.***

Zarda v. Altitude Express

2nd Circuit 2018:

- Skydiving instructor Donald Zarda told one of his customers he was gay in an effort to make her more comfortable while skydiving in tandem with him. Instead, the customer and her boyfriend told the employer that Zarda was gay, and he was fired.
- Zarda sued the employer, alleging (among other things) that his termination was discriminatory in violation of Title VII.
- The Second Circuit held that ***Title VII extends to sexual orientation claims***. It reasoned that sexual orientation-based discrimination is “a subset of sex discrimination.”

R.G. & G.R. Harris Funeral Homes Inc. v. EEOC

6th Circuit 2018:

- As mentioned above, the EEOC filed suit against R.G. & G.R. Harris Funeral Homes (“Harris”) on September 25, 2014 in U.S.D.C. in Indianapolis, the same day it sued Lakeland Eye Clinic. Unlike Lakeland, the Harris case did not settle.
- Aimee Stephens was a funeral director at Harris. Stephens presented as a man when she was hired in 2007. In 2013, Stephens informed Harris that she identified as a woman and wanted to wear women’s clothing to work. Two weeks later, Harris terminated her based on the owner’s religious views.
- The Sixth Circuit, siding with the EEOC, held that ***Title VII prohibits gender identity-based discrimination, and that the firing was unlawful.***

Majority Opinion in *Bostock*

The majority concluded:

1. Title VII's ban on "sex"-based discrimination prohibits discrimination based on sexual orientation.
2. Title VII prohibits discrimination against claimants based on their transgender status.

Majority Opinion - Interpretation of Title VII

- The majority first considered what was meant by “sex” and “discriminate” in 1964.
- The majority concluded that the interpretation in 1964 is the same as in the present day.
- Evolving legal issues show varying definitions of the term “sex”:
 - Sex stereotyping
 - Same sex harassment
 - Parental status

Majority Opinion – “But For” Standard

- Court applies a “but for” standard because “[t]he question isn’t just what ‘sex’ meant, but what Title VII says about it.”
- The Court notes:
 - Title VII explicitly prohibits discrimination “because of” a protected characteristic which “incorporates a ‘simple’ and ‘traditional’ but for causation standard”
 - “An employer violates Title VII when it intentionally fires an individual employee based in part on sex. It doesn’t matter if other factors besides the plaintiff’s sex contributed to the decision.
 - “For an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex.”

Dissenting Opinion – Justice Alito

- Justice Alito dissented on the basis that sexual orientation and gender identity are not explicitly included as protected characteristics under Title VII.
- “[T]he question in these cases is not whether discrimination based on sexual orientation and gender identity should be outlawed. The question is whether Congress did that in 1964.”
- Justice Alito raises what he sees as potential unintended “consequences” of the majority’s opinion (e.g., safety risks in bathrooms/locker rooms, sports, housing, religious exemptions).

Dissenting Opinion – Justice Kavanaugh

“Our role is not to make or amend the law. As written, Title VII does not prohibit employment discrimination because of sexual orientation.”

Assuming that sexual orientation, gender identity, and transgender status are protected under Title VII, plaintiffs failed to establish a claim of sex-based discrimination.

Employees must show that either the literal meaning or the ordinary meaning of “discriminate because of sex” applies to sexual orientation, and the court has failed to meet either standard.

Issues Left Open by *Bostock*

Issues Expressly Left Open In *Bostock*

- Other federal or state laws that prohibit sex discrimination
- Bathrooms, locker rooms, and dress codes
- How doctrines protecting religious liberty interact with Title VII
 - Harris Funeral Homes had asserted a religious defense in the lower courts and had not prevailed. But it did not include that issue in its petition for certiorari.

What's Next After *Bostock*?

- Other *federal* laws that use the term “sex” or “gender”
- Impact on *state, local laws* that do not expressly protect LGBT+ employees but adopt federal law, regulations, interpretations
- Protection of bisexual, nonbinary, gender fluid employees
- Religious accommodation issues
- Title IX: sports, housing
- Restrooms and locker rooms

Religious Accommodation

- Title VII requires reasonable accommodation of an employee's or applicant's religious beliefs and practices, "unless an employer demonstrates that he is unable to reasonably accommodate ... without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).
- Sex, race, national origin and color do *not* require reasonable accommodation.
- As with the ADA, an interactive process is required to evaluate religious accommodations. But unlike the ADA, the threshold for an employer to show "undue hardship" is much lower in the religious accommodation setting. It is much harder for employers to show that a disability accommodation presents an "undue hardship" than a religious accommodation.

Religious Accommodation: TWA v. Hardison (1977)

- In *Hardison*, 432 U.S. 63 (1977), the Supreme Court addressed whether a 24/7 factory had to accommodate an employee who was unable to work on his Sabbath. The court found that in accommodating religious beliefs and practices, an employer need not:
 - provide an accommodation that will require more than a “de minimis” cost.
 - depart from an established seniority system or CBA.
 - impose an undesirable shift or schedule on other employees, although it should permit and facilitate voluntary shift changes or swaps.
 - pay premium wages on a regular basis to another employee to replace the employee being accommodated.
 - inconvenience other employees of other religious beliefs, or even non-religious workers. Requiring other employees to work more often on weekends “would involve unequal treatment of employees on the basis of religion.”
 - suffer a decrease in productivity or efficiency.

Peterson v. Hewlett-Packard (9th Cir. 2004)

- HP began a diversity campaign, and displayed posters showing employees of different races, national origins, ages and sexual orientations.
- Peterson described himself as a “devout Christian,” who believed that homosexuality violates the teachings of the Bible. He further believed he had a religious obligation “to expose evil when confronted with sin.”
- In his work cubicle, Peterson posted three Biblical scriptures which are often cited to condemn homosexuality. Peterson felt that either HP should remove the poster relating to sexual orientation, or it should allow Peterson to post his Bible verses.
- HP rejected these alternatives, and gave Peterson time off with pay to reconsider his position. On his return, Peterson reposted the scriptures, refused to remove them, and was terminated for insubordination.

Peterson v. Hewlett-Packard (9th Cir. 2004)

- Hewlett-Packard won in the district court, and Peterson appealed.
- On appeal, the court upheld the lower court's decision in favor of HP.
 - Peterson's termination resulted from his insubordination and because he generated a hostile and intolerant work environment, not because of his religion.
 - Both of Peterson's suggested accommodations would have imposed an undue hardship on the company, inhibiting:
 - HP's ability to attract and retain a diverse workforce, including lesbian, gay, bisexual or transgender persons; and
 - HP's commercial success.

Buonanno v. AT&T Broadband, LLC (D. Colo. 2004)

- AT&T introduced a new corporate diversity initiative requiring each employee to sign a policy stating that he or she values the differences between co-workers, including gay and straight.
- Buonanno, a born-again Christian, objected to the policy, saying that he respected his gay co-workers but could not respect their lifestyle.
- He met with the human resources director seeking clarification of the language, and he attempted to negotiate language he would be willing to sign.
- Buonanno was told he would be discharged unless he signed the policy as written. He was fired and brought suit.

Buonanno v. AT&T Broadband, LLC (D. Colo. 2004)

- The Court found that since AT&T failed to offer any accommodation, the sole question was whether it could have accommodated Buonanno's belief without undue hardship.
- Although “AT&T's Diversity Philosophy reflects a legitimate and laudable business goal,” and assuming, as AT&T alleged, that “allowing employees to strike piecemeal portions of the Handbook or Certification could pose an undue hardship on its business,” the Court still found that
 “[h]ad AT&T gathered more information about Buonanno's concerns before terminating his employment, it may have discovered that the perceived conflict between his beliefs and AT&T's policy was not an actual conflict at all, or that if a true conflict existed, it was possible to relieve that conflict with a reasonable accommodation.”
- Takeaway: Do not reject accommodation requests without undertaking an interactive process and undue hardship analysis.

**What's Next? Policies,
Training, Inclusion and More**

Policies

- Employers should review and update policies to make clear that discrimination and harassment on the basis of sexual orientation, gender identity and transgender status is prohibited.
- Publicize your company's position to make clear its support and inclusion for diverse employees.
- Consider adopting a separate policy on transgender status, summarizing available gender transition processes at work.

Training

- Update discrimination and harassment training to include discrimination and harassment based on sexual orientation, gender identity and transgender status.
- This is particularly important in places (like Virginia) where these categories may be new to managers and coworkers.
- Include examples of typical harassment scenarios involving gay and transgender employees, and make clear your company's position that harassment of gay and transgender employees will not be tolerated, just like other forms of harassment.

Creating an LGBT+ Inclusive Workplace

E.S.C.A.P.E

- **E – Establish** a gender affirmation (transition) plan and a transgender/gender non-conforming policy
- **S – Conduct sensitivity training** to strive toward eliminating unconscious and conscious bias
- **C – Create** an LGBT-friendly workplace (encourage all employees to feel comfortable bringing their whole selves/”best selves” to the workplace)
- **A – Avoid** micro/macro-aggressions and micro/macro-inequities
- **P – Promote** awareness of gender stereotyping, misgendering, and other ways that LGBT employees may feel diminished, isolated and treated differently than cis and straight employees
- **E – Encourage** a safe and inclusive workplace respecting personal pronouns, gender transitions, facilities usage, privacy and leave accommodations

Tips for Inclusion: Concepts

- **Heterosexism** - The assumption that sexuality between people of different sexes is normal, standard, superior, or universal and other sexual orientations are substandard, inferior, abnormal, marginal or invalid.
- **Misgendering** – Using incorrect pronouns when speaking to or about an individual, whether accidental or intentional.
- **The Correct Pronouns** – pronouns used by an individual
 - May include: ze, zie, hir or singular "they", their and them; her or him; Mr., Ms., or Mx (pronounced “mix”).
 - Many transgender people choose to use a different name than the one they were given at birth.

Tips for Inclusion

- **Be inclusive.** Use open and neutral language
 - Instead of: “Do you have a wife/husband or boy/girlfriend?”
 - Ask: “Do you have a partner?” or “Are you in a relationship?” “What do you call your partner?” “What are your pronouns?”
- **Listen.** How do they describe their identities and partners? Use corresponding terms.
 - Present as a female? She/her
 - Present as a male? He/him
 - Unclear? **Ask them.**
- **Don’t assume.** Every individual is unique.

Inclusion: Using Correct Pronouns

Trans women typically use “she/her” and trans men typically use “he/him”

- Some people may use pronouns which are unfamiliar to you, such as “they” or “zie” (singular) or prefixes such as Mx.
- Ask them if you are unsure what pronouns to use

If you accidentally use the wrong pronoun, briefly apologize and move on; don't belabor the issue or put the individual in a position of having to discuss or explain their position.

- “I didn't mean to assume; what pronouns do you use?”
- Sorry, I meant [insert correct pronoun]

Inclusion: Terms to Avoid

- “Transgenders”, “transgendered”, “a transgender”
- “Sex change”
- “Posing”, “masquerading”, “pretending”
- “He-she”, “gender-bender”, “it,” “the gays”

The following terms can be considered slurs:

- “transvestite,” “she-male”, “tranny”, “fag” “faggot” “sissy”

“Transgender” should be used as an adjective, not as a noun. Do not say, “Tony is a transgender” or “The parade included many transgenders.” Instead say, “Tony is a transgender man”. “He is trans”, or “The parade included many transgender people.”

Inclusion: Avoiding “Dead Name”

For many transgender people, it is painful to hear their former name (often referred to as their “dead name”).

- Use the employee’s chosen name on all employer forms unless it is mandatory that their former name be used (such as on tax forms and immigration forms, when there has been no legal name change yet).
- When mention of the the former name is unavoidable, avoid saying the name itself. For example, say, “the client may not be aware of your gender affirmation” rather than, “the client knows you as [dead name.]”

Tips for Inclusion

For most transgender people, their gender did not “change.” Try to avoid suggesting otherwise.

- For a transgender man, for example, don’t refer to the period before the individual’s affirmation or transition as “when you were a woman.”
- Instead, if discussion of that time period is unavoidable, refer to the period “before your transition.”
- Don’t ask people about their anatomy or bodies
- The effort to be respectful is what matters, so if you accidentally offend someone, just apologize.

Tips for Inclusion

- Do not ask a transgender person whether they have had surgery or hormone treatment, just like you would not ask any other person about private medical issues.
- Transgender people may *or may not* choose to make social, medical, and/or legal changes to affirm their gender identity, including:
 - **Social:** e.g., clothing, pronouns, name, mannerisms, voice
 - **Medical:** e.g., hormone therapy, gender reassignment or other surgery
 - **Legal:** e.g., changing their name and/or gender on birth certificate, driver's license, etc.
- The extent to which the individual has had medical or surgical treatment has no bearing on their gender.

Gender Transition Plans

Gender transition (a.k.a. affirmation) is the process by which a person modifies their physical characteristics and/or gender expression to be consistent with their gender identity.

A gender affirmation plan should address the following issues:

- Timeline;
- Dress code;
- Company resources;
- Identification changes;
- Security clearance issues;
- Facilities usage;
- Sensitivity training;
- Complaint procedures;
- Plan modifications.

Investigating Claims of LGBT+ Discrimination

- Consider who is the best person to conduct this sensitive investigation.
- Revise interview questions to reflect gender neutral terms and pronouns where appropriate.
- Be sensitive to assumptions about the complainant's, accused's, or witnesses' gender identity or sexual orientation.
- Be sensitive to the investigator's own potential biases and assumptions

Discussion, Scenarios and Questions

Scenario 1: When LGBT+ Rights and Religion Clash

Your company conducts its annual anti-harassment training and adds a segment on sensitivity and inclusion towards LGBT+ employees. One non-managerial employee, Lois, comes to see you afterward and says her religion does not allow her to knowingly interact with gay or transgender people. She indicates that she is not aware of anyone at work who is gay or transgender, but if she were, she would have to stop speaking to or even acknowledging them.

Scenario 1: When LGBT+ Rights and Religion Clash

There are three gay employees in Lois's office but she does not know they are gay and is not required to interact with them to do her job. What should the company do?

- A. Nothing; there's no problem (yet).
- B. Remind Lois of the company's anti-harassment policy towards LGBT+ employees, and inform her she is expected to follow it.
- C. Terminate Lois's employment because she has expressed an intention to harass employees based on gender identity and sexual orientation.
- D. Same as B plus advise her that ignoring LGBT+ employees would violate the company's anti-harassment policy.

Scenario 1: When LGBT+ Rights and Religion Clash

A new employee who appears to be transgender joins the company. The employee, Jae, is required to work closely with Lois. The VP of HR asks you whether he should find out if the employee is transgender and whether the employee had had any medical treatments. The VP wants to get ahead of any issues and protect Jae if necessary. What do you advise?

- A. Do not ask the employee anything.
- B. It is ok to ask if the employee is transgender but not whether he has had any medical treatments.
- C. It is fine to ask both questions in order to protect the employee.
- D. Tell the employee he may have difficulty working with Lois if he is transgender, so he should keep it to himself.

Scenario 1: When LGBT+ Rights and Religion Clash

Jae starts telling coworkers he is transgender. Lois tells the VP of HR that she is very sorry but she cannot work with him. What should the company do?

- A. Terminate Lois's employment.
- B. Give Lois a final warning to work with Jae productively and terminate her employment if she does not comply.
- C. One of the employees will need to be transferred to another position; start reviewing available positions and assess who can be moved.
- D. Engage in an interactive reasonable accommodation process with Lois.

Scenario 2: Handling a Transition to Nonbinary

Benjamin is a transgender man. Two years ago, after living as female, he began to present as male, and his company supported him through the gender affirmation process. He now realizes he is non-binary. He tells the VP of HR he is neither male nor female, has changed his name to “Omega,” and prefers the pronoun “they.”

Scenario 2: Handling a Transition to Nonbinary

The CEO asks you if the company is legally required to support another gender affirmation process for this employee. The company spent significant time and expense two years earlier to change Benjamin's name badge, business cards, email address, and company documents. The CEO also is concerned that clients may not accept another change in the employee's gender and name.

- A. Yes, the company is legally required to support Omega.
- B. No, there is no legal requirement to do so at this time.
- C. It's not clear under existing law, but the safest course is to do so.
- D. It depends on whether Omega will confirm they will not change their name or gender identity again.

Scenario 2: Handling a Transition to Nonbinary

Your company has a stellar reputation for diversity and inclusion, has won awards for “best place to work” and wants to remain an employer of choice. What should its next steps be?

- A. Work with Omega on a transition plan, including communications to other employees, timing, and related issues.
- B. Tell Omega that the company cannot start using their new name until there is a legal name change.
- C. Send an email to the company’s senior leadership team informing them of Omega’s new name and pronoun.
- D. Inform Omega that because the company’s payroll system only recognizes male and female genders, the company cannot honor their request.

Scenario 2: Handling a Transition to Nonbinary

Omega's supervisor tells you he is happy to use the name "Omega," but he cannot use the term "they" because it is grammatically incorrect. What should the company do?

- A. Tell Omega that unfortunately, the company cannot make the supervisor use the pronoun "they" when referring to Omega.
- B. Direct the supervisor to use the pronoun "they" when referring to Omega.
- C. Suggest Omega look for another job, and offer a severance package.
- D. Require Omega and their supervisor to sit down together and work out the details about what pronoun the supervisor will use with Omega.

Scenario 3: The Question of Restrooms

Your company has a summer intern program that employs post-doctoral students at your facilities around the country. One of your smaller facilities is hosting the interns for a conference this year. The facility director at that location, Marvin, learns that Susan, an intern in the New York office who will be attending the conference, is a transgender woman. Marvin informs you the day before the conference that he is worried about how his female staff will react to sharing a restroom with Susan. He informs you that he has addressed the concern by allocating a specific single-person restroom on the ground floor for Susan's use. No one else is allowed to use this restroom during the conference. Marvin plans to inform Susan that she must use this restroom during her visit to the company.

Scenario 3: The Question of Restrooms

Is it legal under federal law for Marvin to require Susan to use the single-person restroom?

- A. Yes, this is fine for now, although it may not be in the future.
- B. Yes, because female employees have the right to a safe and gender-specific restroom.
- C. Federal law is unclear.
- D. This is legal as long as at least one female employee is uncomfortable using the restroom with Susan.

Scenario 3: The Question of Restrooms

What should you advise Marvin to do?

- A. As the local facilities director, Marvin should make the decision.
- B. Marvin should discreetly canvas the female employees for their opinions before doing anything.
- C. Marvin should not tell Susan what restroom to use and should take no further action.
- D. Marvin should warn the other employees that a transgender employee is coming to the conference, in case they want to use a different restroom.

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Thank **you.**