

# The Transgender Bathroom Dilemma: Which Door is Right?



As more people are identifying themselves as transgender, the issue of which restroom they should use in the workplace has become controversial and confusing. Until now. The U.S. Equal Employment Opportunity Commission (EEOC) said this month, in a case of first impression, that the Department of the Army violated federal sex discrimination law when it prohibited a male-to-female transgender civilian employee from using the women's restroom at work. The rules have just changed. Read up to catch up ...

**Case in Point:** The Army barred Tamara, a male who was transitioning into a female, from using the women's restroom. Instead, it required her to use a single-user executive bathroom, which lacked shower facilities.

When the single-user restroom was occupied, Tamara would often use the common women's bathroom. But supervisors told her to stop doing so because it made the other employees uncomfortable. Also, her supervisor continued to refer to Tamara by using male pronouns and calling her "sir," despite the fact that she had legally changed her name.

Tamara had agreed to a "restroom agreement plan" whereby she would not use the women's restroom until after her surgery. She did this, she said, because she wanted to give her co-workers time to accept the change.

However, Tamara eventually decided not to have the surgery, and she began using the women's bathroom full time. Her supervisor again scolded her. She responded by reminding the boss that she was "legally female." But, her supervisor never stopped.

Tamara brought an EEOC claim against her employer, citing sex discrimination and harassment. The Army argued that there was nothing in the law that requires employers to permit transgender workers to use restrooms consistent with their gender identity.

**EEOC ruling:** On the contrary, the EEOC said, "Title VII prohibits employers from relying on speculation, stereotypes and co-workers' preferences when limiting a transgender female employee's right to use a female restroom."

The EEOC added that employers cannot require that employees take the complete surgical transition to the other gender before allowing access to other restroom. Employers, the EEOC said, "may not condition access to facilities--or to other terms, conditions, or privileges of employment--on the completion of certain medical steps that the (employer) itself has unilaterally determined will somehow prove the bona fides of the individual's gender identity."

Plus, the EEOC said the Army supervisor had subjected Tamara to sexual harassment by continuing to refer to her as "sir." The EEOC said such treatment was "intended to humiliate and ridicule." ([Lusardi v. McHugh](#), EEOC, No. 0120133395, 4/1/15)

### 3 Lessons Learned ... Without Going To Court

1. **Medical procedures are not necessary.** Employees can transition genders without surgery. Be ready to accommodate.
2. **Dust off your harassment, discrimination and retaliation prevention policy.** Sex discrimination is unlawful and there is no defense. Have a zero tolerance for such misconduct. Learn more about the issue on at the EEOC website: [What You Should Know about EEOC and the Enforcement Protections for LGBT Workers](#).
3. **Provide diversity or sensitivity training.** Remember, our differences are our organization's greatest asset.