

FAQs continued . . .

employee by co-workers, supervisors, or third parties, such as customers, clients, and vendors.

8) WHAT TYPE OF DOCUMENTATION IS APPROPRIATE TO REQUEST BEFORE ALLOWING AN EMPLOYEE TO ACT IN ACCORDANCE WITH THEIR GENDER IDENTITY AT WORK?

None. There is no legitimate reason for an employer to request legal or medical documentation of an employee's gender identity. Requiring this type of documentation would likely constitute unlawful discrimination. This prohibition extends to employer requests for documentation prior to allowing an employee to use a gender identity-appropriate restroom or locker room. It would not, however, preclude an employer from requesting proper legal documentation before altering an employee's name or sex designation on official records, such as tax withholding.

9) IS AN EMPLOYER PROHIBITED FROM DISCIPLINING OR FIRING AN LGBT EMPLOYEE FOR POOR PERFORMANCE?

No. An employer may discipline or fire any employee for non-discriminatory reasons, such as poor job performance. It is recommended that an employer document instances of poor performance and discuss performance concerns with the employee. The law does not grant immunity to people with protected characteristics; it simply ensures that a person's membership in a protected category does not affect the employment decision.

If you are employed by, or have applied to be employed by the State of Vermont, and you believe you have been discriminated against, you can learn how to file a complaint with the Human Rights Commission by contacting us by telephone or e-mail, or by going to our website to download a complaint form; contact information is listed below. You have one year from the date of an alleged act of employment discrimination to file a complaint with the Human Rights Commission.

Vermont Human Rights Commission

14-16 Baldwin Street
Montpelier, VT 05633-6301

Phone: 800-416-2010, 802-828-2480
Fax: 802-828-2481
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*Vermont Human Rights
Commission*

SEX, SEXUAL ORIENTATION AND GENDER IDENTITY: A Guide to Vermont's Anti-Discrimination Law for Employers and Employees



Vermont law:

It unlawful in Vermont for an employer to discriminate because of a person's race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, disability or age.

What do these terms mean?

- "Gender identity" is defined by Vermont law as "an individual's actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual's gender or gender identity, regardless of the individual's assigned sex at birth."
- "LGBT" refers collectively to lesbian, gay, bisexual, and transgender people.
- "Sex" means the biological classification of people as male or female. Newborns are assigned a sex at birth based primarily on the appearance of their genitals.
- "Sexual Orientation" is defined by Vermont law as "female or male homosexuality, heterosexuality, or bisexuality."
- "Transgender" is an umbrella term which refers to individuals whose gender identity diverges from societal norms.

FAQs

1) WHO MUST OBEY THIS LAW?

Any individual or organization that hires one or more individuals to perform services.

2) WHAT QUESTIONS MAY AN EMPLOYER ASK OF AN EMPLOYEE OR A CANDIDATE FOR EMPLOYMENT, AND WHAT QUESTIONS SHOULD THE EMPLOYER AVOID?

An employer should not ask applicants/employees any questions designed to detect their gender identity, sexual orientation, marital status, the name of their significant other, the relationship between household members, or for a photograph to be submitted with a job application. An employer may ask questions regarding an applicant's or employee's ability to perform job functions and whether an applicant has a spouse/significant other/partner who works for the employer. It is recommended that employers ask the same questions of all applicants/employees.

3) IS AN INDIVIDUAL PROTECTED IF AN EMPLOYER THINKS THE EMPLOYEE'S GENDER IDENTITY IS DIFFERENT THAN IT REALLY IS AND TAKES AN ADVERSE ACTION AGAINST THE EMPLOYEE BASED ON THAT PERCEPTION?

Yes. It is illegal for an employer to discriminate against an applicant or employee based on their actual or perceived gender identity, even if the employer's perception is wrong.

4) DOES THE LAW REQUIRE EMPLOYERS TO ELIMINATE SEX-SEGREGATED BATHROOMS?

No. Vermont employers may maintain sex-segregated bathrooms. However, the law does require that employers permit employees to access bathrooms in accordance with their gender identity, rather than their assigned sex at birth.

5) MUST AN EMPLOYER PROVIDE BENEFITS TO EMPLOYEES REGARDLESS OF THEIR GENDER IDENTITY OR SEXUAL ORIENTATION?

Yes. Benefits (e.g., vacation and sick leave,

medical and other insurance policies) must be provided to the same extent that the employer provides such benefits to employees generally, without regard to an employee's gender identity or sexual orientation. The interface between state law and federal law regarding benefits for an employee's family members remains unclear.

6) MAY AN EMPLOYER ENFORCE DRESS CODES AND GROOMING STANDARDS?

Yes. An employer may establish and require employees to adhere to reasonable workplace grooming and dress standards that are related to the nature of the employment. Within established grooming and dress code policies, employers must allow employees to appear, groom and dress in a manner consistent with the employee's gender identity.

7) WHAT CONSTITUTES UNLAWFUL HARASSMENT?

Unlawful harassment is any unwelcome verbal or physical conduct that is sufficiently severe or pervasive, and either denigrates or shows hostility or aversion towards a person on the basis of membership in a protected category (such as gender identity), that may:

- Have the purpose or effect of creating an intimidating, hostile or offensive work environment;
- Have the purpose or effect of substantially interfering with the employee's work performance; or
- Affect the employee's employment opportunities or compensation.

Harassment based on gender identity can include sexual advances, malicious conduct, and intentional misuse of gender-specific pronouns. Employers are required to protect their employees from harassment about which the employer knew or should have known, and that is directed towards the