CLIENT ALERT: Massachusetts Enacts Legislation Prohibiting Gender Identity Discrimination in the Workplace

Recent legislation in Massachusetts adds “gender identity” to the classes of individuals protected under the state’s anti-discrimination laws. Governor Deval Patrick signed a bill entitled “An Act Relative To Gender Identity” (the “Act”), commonly referred to as the “Transgender Equal Rights Act,” into law on Nov. 23, 2011. It will take effect on July 1, 2012.

The new law protects transgender individuals from discrimination in employment, housing, education, and credit, in addition to providing additional protections from hate crimes. Under the Act, it will be unlawful for Massachusetts employers – both public and private – to discriminate against job applicants or employees on the basis of their gender identity. Notably, the Act does not provide increased protection in the area of public accommodations.

Gender identity is defined in the following way: “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. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, as part of a person’s core identity; provided however, gender-related identity shall not be asserted for any improper purpose.”

Employers should take note that the Act defines gender identity in broad terms. The protections are not limited to those individuals who have undergone, or are in the process of undergoing, sexual reassignment surgery. As an estimated 33,000 transgender individuals currently reside in Massachusetts, the Act may have a wide impact.

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Employers covered by Chapter 151B of the General Laws are now prohibited from refusing to hire, discharging or otherwise discriminating against transgender applicants or employees in their compensation and in their terms, conditions, or privileges of employment. Likewise, it is now unlawful for employers to retaliate against any individual for filing a complaint of gender identity discrimination or objecting to prohibited acts of discrimination against transgender employees. As with other protected classes such as race and sex, employees who believe they have faced discrimination in the workplace because of their gender identity may file claims with the Massachusetts Commission Against Discrimination.

Employers are encouraged to review their anti-harassment and anti-discrimination policies, as well as their codes of conduct, to provide employees with protection based on gender identity. Because of the broad definition of gender identity in the law, employers should train their employees to be sensitive to all types of gender identity or expression. Employers should also be aware of the potential impact of the Act on dress and appearance codes, as well as bathroom or locker room usage policies.

Massachusetts is not the first state to make gender identity a protected class. Fifteen other states and approximately 140 cities and counties nationwide have already included “gender identity” as a protected class in their laws and ordinances.

If you have any questions about how the new law may affect your business or employees, or about Massachusetts anti-discrimination laws in general, please contact your MBJ attorney.

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