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CLIENT ALERT: New Hampshire Adds Gender Identity to List of Protected Classes – By Jeffrey S. Siegel

New Hampshire recently enacted "An Act Prohibiting Discrimination Based on Gender Identity," amending the New Hampshire Law Against Discrimination, and prohibiting employer discrimination because of an individual's "gender identity." The law will take effect on July 8, 2018.

The New Hampshire law defines gender identity as 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." The law states that "[g]ender-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, that gender-related identity shall not be asserted for any improper purpose."

New Hampshire joins the other New England states in establishing gender identity as a protected class. There are now 20 states that prohibit discrimination on the basis of gender identity in housing, employment and public accommodations. The federal government differs. By way of memorandum dated October 4, 2017, Attorney General Jeff Sessions announced that the Department of Justice does not believe that gender identity is a *per se* protected class under Title VII of the Civil Rights Act, reversing a position previously announced under the Obama Administration.

New Hampshire employers should review and update their equal employment opportunity policy, anti-harassment policy, applications, and other materials to include this new protected class. In addition, managers and supervisors should be trained on how to respond to gender identity-related conduct and speech in the workplace.

For more information on ensuring compliance with this and other anti-discrimination laws, including training, please contact your MBJ attorney.

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This alert was originally published on June 28, 2018.

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