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Get prepared: EEOC cracks down on workplace transgender issues

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Employers should take a close look at employee handbooks to make sure their businesses are ready to handle potential transgender and sexual orientation issues because the Equal Employment Opportunity Commission is filing lawsuits.

Sexual orientation and gender identity aren't specifically listed as protected categories under Title VII of the Civil Rights Act of 1964. However, the EEOC has been very clear in its stance that plenty of case law – including from the U.S. Supreme Court – interprets the statute as prohibiting discrimination based on sexual orientation or gender identity.

“This is an emerging issue and not something employers should be ignoring,” said Katharine Sangha, at attorney at Polsinelli PC in Kansas City. “They should already be thinking about what their policies say and what kinds of laws cover them. It’s especially important here in Kansas City because it’s one of the cities that does have a local ordinance prohibiting discrimination in employment based on sexual orientation and gender identity.”

The Occupational Safety and Health Administration also is joining the fray, following the lead of the EEOC. OSHA recently issued guidelines regarding restroom access for transgender employees. The gist is that OSHA considers it a best practice to allow employees to use bathrooms consistent with their everyday gender identity. Forcing a transgender employee to use a gender-neutral



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Katharine Sangha of Polsinelli PC says businesses should prepare for regulatory scrutiny regarding the treatment of transgender and sexual orientation issues.

bathroom is also not considered a best practice because it segregates that employee from the rest of the workforce and can make him/her fear for his/her safety or avoid using the restroom at work and end up with a serious illness.

A company handbook could present other issues to consider as well, such as dress codes. Maybe the employee intends to change his or her name, which requires paperwork to keep employment files up to date.

“It’s never a bad idea to just sit down and talk with an employee about these

types of issues that might arise through the employer’s policies, such as dress code or bathroom facilities and that sort of thing,” Sangha said. “Ignoring the issue and hoping it just goes away is probably the most common mistake employers make. I really think employers really need to be proactive and confront it head on. That will be better in the long run.”

OSHA estimated that about 700,000 adults in the U.S. are transgender, living their lives differently from the gender listed on their birth certificates.