



Advocate's Guide to the Hansen/Ocasio/Schulter Gender Identity Amendment

This guide is intended to be used as background information for those who are lobbying for the Chicago Gender Identity Amendment. The guide is based on questions that are frequently asked by those who are not familiar with the concept of gender identity or the need to protect the civil rights of gender variant or transgender people. It is suggested that advocates familiarize themselves with the questions that may arise and use the answers as a guide to formulating responses to those questions.

Overview

The Hansen/Ocasio/Schulter ordinance amends the Chicago Human Rights Ordinance, Fair Housing Ordinance, Commission on Human Relations, and Personnel Ordinance by adding the category of "gender identity". The change guarantees that the group comprising "gender identity" is inclusive of a person's actual or perceived gender identity, appearance, or behavior regardless of whether they differ from those traditionally associated with one's sex at birth.

Why Is the Amendment Needed?

There are many people who have not been afforded adequate protection by the current Chicago Human Rights laws. Many of those have a gender identity, appearance or behavior that is perceived to be outside of gender role norms. While some identify as transgender, that designation by no means encompasses all gender variant people who have experienced discrimination. Both men and women, straight and gay, have been discriminated against based on the perception of being "too feminine" or "too masculine."

In Chicago, it is currently legal to fire someone from a job, deny them service in a public accommodation such as a hospital, deny them credit, or refuse them housing solely on the basis of real or perceived "gender identity" outside of gender stereotypes. The proposed amendment would end this form of legal discrimination in Chicago.

What the Amendment Does

- Provides a means for the Chicago Commission on Human Relations to adjudicate complaints of discrimination based on gender identity, appearance or behavior.
- Prohibits the firing of workers or refusing to hire or promote a qualified candidate solely on the basis of gender stereotypes.
- Recognizes that all citizens of Chicago share the same fundamental rights.

What the Amendment Does Not Do

- Does not promote or condone any lifestyle or give special privileges to any individual, group or community.
- Does not supercede a same-sex facility's right to allow only recognized individuals of one sex.
- Does not require employers to hire unqualified workers for any reason.

1. WHAT DOES THE GENDER IDENTITY AMENDMENT DO?

This amendment would prohibit discrimination in employment, credit, housing and public accommodations because of a person's gender identity or expression. It would, in particular, make it illegal to discriminate against an individual simply because that person does not fit a narrow stereotype of what it means to be a "real man" or a "real woman."

The amendment adopts the definition of "gender identity" that has been used in other cities, which includes the "actual or perceived appearance, expression, identity or behavior, of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth."

Gender-identity based discrimination occurs when a person is treated badly because he or she looks or acts differently than how a man or woman is "supposed to be." For example, gender-based discrimination occurs when a woman is passed over for promotion because her employer believes she is "too aggressive for a woman," or when a person who is otherwise qualified and is doing a good job is fired solely because the employer finds out that the person is transgender. The Gender Identity Amendment will make it clear that this kind of discrimination is prohibited

2. WHY IS THE GENDER IDENTITY AMENDMENT NEEDED?

Gender-identity based discrimination is a serious and widespread problem that stifles individual initiative, destroys careers, and prevents employees and businesses from functioning at their highest potential.

No one should be denied a job simply because of the way they express their gender. But right now in Chicago, people whose gender identity or expression differs from that traditionally associated with their designated sex at birth are particularly vulnerable to this type of discrimination. Not only in the workplace, but also in housing and in public accommodations, gender variant people who have been fired or denied services because of gender identity find themselves without recourse under the law.

Advocacy organizations, such as It's Time, Illinois, have documented more than a hundred such incidents in Illinois over the past few years. Most have occurred in Chicago. Many of the incidents involve transgender people, but about forty percent involve other people, both gay and straight, who were discriminated against because of their gender expression. One third of gays and lesbians who have reported employment discrimination attribute that bias directly to their own expression of gender. Many find they cannot prove that they suffered discrimination as a result of actual or perceived sexual orientation, and thus find themselves without legal recourse in the Chicago Human Rights Ordinance.

The Chicago Commission on Human Relations supports the Gender Identity Amendment because it would give them the means to adjudicate complaints of discrimination based on gender identity or expression.

3. ISN'T THIS KIND OF DISCRIMINATION ALREADY ILLEGAL? ISN'T IT COVERED BY SEXUAL ORIENTATION OR SEX DISCRIMINATION LAWS?

Currently there are no legal protections in the City of Chicago or Cook County for people who would be protected under the proposed amendment. Although the Illinois Human Rights Department recently adopted a ruling that may give legal protection to some of those who would be covered by the amendment, the ruling applies only to a small segment of the gender variant population.

The City of Chicago and Cook County have specifically ruled that gender identity is not covered under their Human Rights Ordinances. Both the Chicago Commission on Human Relations and the Cook County Commission on Human Rights have held that gender identity is different from sexual orientation and not covered under their respective ordinances. Likewise, both Commissions have ruled that gender identity is not covered under the category of sex.

Without the option of filing complaints under sexual orientation or sex, most gender variant victims of discrimination have no recourse under current law, and thus do not pursue adjudication. Typically gender variant individuals file six or fewer complaints with the Chicago Commission on Human Relations each year. Some of those complaints are filed under disability, claiming that gender identity disorder is a disability. To our knowledge, the Commission has not ruled on any of these cases.

The Illinois Department of Human Rights has adopted a ruling that Gender Identity Disorder is covered under the State's Human Rights Act as a mental handicap. This ruling has never been challenged and put to a test. Even if the courts do subsequently uphold this ruling it would only cover a small portion of those the amendment to the ordinance would protect.

4. IS THE GENDER IDENTITY AMENDMENT A RADICAL STEP FOR CHICAGO?

No. The amendment is consistent with the law in many other state and local jurisdictions. As of May 2002, there are 45 jurisdictions in the United States that have passed non-discrimination laws that protect gender-variant people.

In the past few years we have seen a trend across the nation of cities passing anti-discrimination laws that include gender identity or expression. In 2002, the cities of

Philadelphia, Tacoma, Dallas, New York, Allentown, and Erie County (PA) all passed this needed legislation. Chicago would join the ranks of its fellow Illinois cities of Champaign, Urbana, Evanston and DeKalb in including protections for transgender people in its laws. Champaign and Urbana have had transgender-inclusive laws since the late 1970s.

Chicago is a city known for its constant movement forward, both economically and socially. Part of economic growth is keeping up with good business practices. Numerous successful corporations — including American Airlines, Eastman Kodak, J.P. Morgan, Lucent Technologies, Walgreen's and Xerox — have adopted policies protecting transgender people. Anti-discrimination laws that include gender identity are also critical to the social health of any city. By enacting this measure, Chicago will reaffirm its commitment to being a forward-looking city that welcomes all people and opportunities.

5. DOES THE GENDER IDENTITY AMENDMENT PROHIBIT EMPLOYERS FROM HAVING DRESS CODES AND GROOMING REQUIREMENTS?

The amendment prohibits gender-identity based discrimination only; it is not a general "appearance discrimination" statute. Nothing in the proposed ordinance precludes an employer from setting dress codes for the employees at work.

The requirement for a dress code will vary by company and from job-to-job within a company. Companies that require uniforms or special safety clothing will generally describe their requirements in such a policy. Companies with employees that are in contact with customers will generally set forth standards of dress, hygiene, and attitude.

Federal courts have almost always found the enforcement of dress codes not to be race, sex or religious discrimination. Courts have also held that employers have an absolute right to establish and enforce different grooming requirements for men and women.

Transgender persons, who are dealing with gender identity issues, will dress consistently in clothing appropriate to their identity. Documentation can substantiate an individual's claim to being transgender. An employer retains the right to set usual workplace standards of dress and to require a transgender employee to conform with the dress code appropriate to his or her gender identity.

6. WOULD THE PROPOSED AMENDMENT ALLOW SO-CALLED "CROSS-DRESSING" AT WORK?

Claims that the Gender Identity Amendment would force employers to hire "men in dresses" are ridiculous and unfounded. There are now 45 jurisdictions that have passed gender-identity discrimination laws, and no problems related to so-called cross-dressing at work have emerged in any of them.

This question is always somewhat of a red herring. The City of Minneapolis has had a transgender-inclusive non-discrimination law since 1975, and there has been no wave of casual cross-dressing in workplaces in that jurisdiction.

The courts have determined that there is nothing inherently discriminatory about having different clothing and grooming requirements for men and women, so long as the requirements are even-handed and do not put an undue burden on either sex. The proposed amendment does not change that. It merely clarifies that in the case of a gender-specific dress code, an employer must allow an employee to adopt the dress code that accords with the employee's gender. For example, a transgender woman must be permitted to wear female clothing, and a transgender man must be permitted to wear male clothing.

7. HOW SHOULD SPECIAL ISSUES ASSOCIATED WITH BATHROOMS, LOCKER ROOMS AND SHOWERS BE HANDLED?

There are numerous ways to deal with the question, but first and foremost is that the transgender person not be fired because the employer cannot figure out an answer.

Many employers have already successfully dealt with these issues on a case-by-case basis. City human rights departments in municipalities that do have gender-identity non-discrimination laws, such as San Francisco, have produced compliance guidelines that take the needs of transgender employees and their employers into account. The Chicago Commission on Human Relations will undoubtedly create their own guidelines upon passage of the Gender Identity amendment.

A particularly delicate issue may involve a "pre-operative transsexuals," an individual who identifies as one gender at all times, which gender is perceived to conflict with their reproductive anatomy, and who are either about to begin or are in the process of achieving gender reassignment surgery. This person has a right to the same level of convenience and access as other employees. This doesn't necessarily mean that employee will have the right to use his or her preferred facilities, if he or she doesn't yet meet the legal standards for access to them. But a reasonable accommodation, providing an equivalent level of access and convenience, should be made.

8. DOES THIS MEAN WOMEN WILL HAVE TO SHARE BATHROOMS WITH MEN, AND VICE-VERSA?

This law will prevent people from being forced to use bathrooms that do not correspond to their gender identity. Like everyone else, transgender people need access to safe and dignified restroom facilities.

Right now, in our community, there already are cases in which people are required to use bathrooms inappropriate to their gender identity – when transgender women are forced to

share bathrooms with men, or transgender men are forced to share bathrooms with women because employers and providers of public accommodations do not have a sensible bathroom policy in place. This legislation will help resolve those awkward situations, not create them.

Transgender people pose no special risk to others who are using a restroom. Legitimate safety concerns, of course, need to be addressed regardless of who poses them. Employers and public accommodations have an obligation to make restroom facilities safe for all people. However, we should not let legitimate safety concerns become a proxy for bias and prejudice against transgender people.

Ultimately, a rule that would bar transgender people from using the restroom that is consistent with their gender identity and expression is unworkable. Any criterion other than a person's gender identity and expression as a basis for determining which restroom a person may use would set a dangerous precedent of allowing employers (and others) to ask and obtain personal and intrusive information which no one should have to share.

DEFINITIONS

Note: Lobbying for the Gender Identity Amendment is not intended to be a Transgender 101 lesson. However, these definitions may be useful if there are some questions about the meaning of terms.

Transgender - an umbrella term that refers to people who identify or who are identified as transsexuals, cross-dressers and transvestites, drag kings and queens, and female and male impersonators among others. Transgender people are those who express themselves in ways that are traditionally associated with the gender that is opposite to their birth sex. Some transgender people may live a significant part of their lives, or entirely, in that gender, while others may express their gender through only occasional cross-dressing.

Gender Variant - a term that describes those who transgress conventional gender norms on a regular basis, but who may not necessarily attempt to present themselves, or identify with, the gender opposite their birth sex. It is a broad term that encompasses transgender, but also includes masculine females, feminine males, intersex individuals, persons exhibiting gender characteristics and identities which are perceived to be androgynous, and all other persons whose perceived gender or anatomic sex may be incongruent with their gender expression.

Gender Identity - a person's core identity as being male, female or androgynous. Within the Gender Identity Amendment, the term is defined as the actual or perceived appearance, expression, identity or behavior, of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.