

GENDER EXPRESSION NON- DISCRIMINATION ACT

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EMPIRE STATE PRIDE AGENDA

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ANSWERS TO COMMON QUESTIONS

What is the Gender Expression Non-Discrimination Act (GENDA)?

GENDA is a bill that adds the category of “gender identity and expression” to the already existing New York State human rights laws. Current law makes it illegal in New York State to discriminate on the basis of age, race, creed, national origin, sexual orientation, sex and other categories in the areas of employment, housing, public accommodations, education and credit. This act would extend current law to ban discrimination on the basis of gender identity and expression as well. Similarly, it would add gender identity and expression to these same categories already included in New York’s hate crimes law.

What is gender identity and expression and how does it differ from sexual orientation?

Gender identity and expression refer to the way people self-identify and present their masculinity and/or femininity to the world. Often, but not always, this corresponds to a person’s sex as assigned at birth, so that a person born biologically male or female often dresses, adopts a hair style, and uses a name and pronoun in ways that reflect the culturally accepted roles associated with their birth sex.

Transgender is an umbrella term used to designate a community of people who regularly present in a gender different from the sex assigned to them at birth and who live a significant part of their lives in that gender. This includes people who have undergone medical procedures to change their sex and those who have not.

Sexual orientation refers to one’s romantic and sexual attraction. Gender variance is not in itself any indicator of sexual orientation. Just like everyone else, gender variant and transgender people may be heterosexual, homosexual, bisexual, or asexual.

Why is this legislation necessary?

Through its Human Rights Law, New York prohibits discrimination against groups of citizens who face widespread social hostility and unequal treatment. Unfortunately, people who present their masculinity and/or femininity in a way that differs from the stereotypical gender roles traditionally associated with their birth sex are not explicitly covered in statute, though there clearly is a need: One third of transgender New Yorkers have been homeless; 74% have experienced harassment or mistreatment on the job, while 20% reported losing a job and 37% reported not being hired because of their gender identity or expression; 28% of transgender New Yorkers report having experienced a serious physical or sexual assault motivated by transphobia or homophobia.

Isn’t transgender discrimination already prohibited by the law?

Neither federal nor state statutes specifically ban discrimination based on gender identity and expression in areas like employment, housing or public accommodations. While some New York State courts have found that existing prohibitions on ‘sex,’ ‘gender’ or ‘disability’ discrimination can apply to transgender people, those precedents do not necessarily apply in all circumstances and are not binding on the entire state. Because sexual orientation and gender identity and expression are different, courts generally have not interpreted sexual orientation non-discrimination laws to include transgender discrimination.

What is the current public opinion around prohibiting transgender discrimination?

A solid majority of New Yorkers support a statewide law prohibiting transgender discrimination in employment, housing and public accommodations. A Global Strategy Group poll of 600 voters commissioned by the Pride Agenda in February

2008 found that (with a +/-4.0% margin of error) 78% of New York voters support passage of such a law and only 13% oppose. Support is strong across the state, whether in upstate (74%), New York City (79%) or the downstate suburbs (82%), and among Democrats (86%), Republicans (67%) and Independents (78%).

Is there precedent for prohibiting discrimination against transgender people?

Yes, in both the public and private sector. Fifteen states and the District of Columbia have enacted comprehensive transgender non-discrimination laws: California, Connecticut, Colorado, Hawaii, Illinois, Iowa, Maine, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington. Over 100 localities across the United States have also passed local transgender non-discrimination ordinances, including New York localities like the Cities of Albany, Binghamton, Buffalo, Ithaca, New York and Rochester, and Westchester, Suffolk and Tompkins Counties. The State of New York prohibits discrimination against transgender state employees in all matters related to employment. New York also passed the Dignity for All Students Act which contains specific protections from discrimination and bullying on the basis of gender identity and expression in the state's public schools. Many private employers have adopted their own policies to protect employees from transgender discrimination, including New York companies like Alcoa, American Express, Bausch & Lomb, Citigroup, Corning Inc., Deutsche Bank, Eastman Kodak, Goldman Sachs, IBM, J.P. Morgan Chase, Keyspan, MetLife, The New York Times, PepsiCo, Xerox and Pfizer.

If New York had a transgender non-discrimination law, would employers lose their ability to enforce dress codes or deal with disruptive behavior?

No. Employers would retain the right to enforce dress codes and require appropriate dress by employees, with the employee being required to dress according to the guidelines appropriate to the employee's gender identity. Likewise, the law would not prevent businesses from firing transgender people who are not able to meet the requirements of their job.

Would the law require that all public bathrooms be unisex?

No. Since gender identity and expression non-discrimination laws have been interpreted as only requiring reasonable accommodation for transgender employees, employers have already successfully dealt with any issues around restroom usage on an individual basis, for example by creating or designating a single-occupancy restroom in an office or business. There has never been a reported problem regarding the security of restrooms – including women's restrooms -- in all the jurisdictions where similar laws have been adopted.

Would the law force owners of small and family-owned businesses to hire transgender people?

No. Nothing in the law would alter the exemption that already exists in the human rights law for small businesses with fewer than four employees.

Would the law apply to people renting out a room in their home?

No. The current human rights law exempts single family and owner-occupied two family homes. Nothing in this law would alter that exemption.

How would the law apply to religious groups?

Nothing in the law would alter the religious exemptions that already exist in the human rights law, nor would the law supersede a religious institution's First Amendment right to hire and fire according to the tenets of its religion.

Wouldn't the law give transgender people special rights or create a slippery slope towards banning discrimination based upon eye color, etc.?

No. As with the rest of the human rights law, all this law would do is mandate equal treatment and create an equal playing field. For decades, the state legislature has identified protected classes, such as race and age, within New York's human rights laws to protect groups of citizens that have historically been treated unequally. The experiences of transgender individuals in New York State include severe social ostracism and legal marginalization. In fact, many transgender people face multiple oppressions based on race, ethnicity and class as well as gender identity and expression.