

## Transgender Issues in the Workplace

### Title VII

As previously reported, the U.S. Equal Employment Opportunity Commission (EEOC) and federal courts consider discrimination on the basis of an applicant or employee's non-conformity with gender norms (e.g., transgender persons or "cross-dressers") to be a form of prohibited gender discrimination under Title VII. This standard was applied in a recent EEOC decision where a civilian employee of the U.S. Army transitioned from male-to-female (i.e., she was a transgender female). After her transition, the employee was required to use a single-user bathroom until she anatomically became a female. The employee used the single-user restroom, but also used the women's restroom when the single-user restroom was out of order. Her supervisor confronted her about this, and reiterated that she could not use the women's restroom because she was anatomically a male. Additionally, her supervisor repeatedly referred to her by her former male name, and referred to her using male pronouns to co-workers and others. The EEOC ruled that the U.S. Army created a hostile work environment based on the employee's sex in violation of Title VII.

### Occupational Safety and Health Administration (OSHA)

OSHA recently published guidance concerning restroom access for transgender workers. The guidance includes the following:

- All employees, including transgender employees, should have access to restrooms that correspond to their gender identity.
- A person who identifies as a man should be permitted to use men's restrooms, and a person who identifies as a woman should be permitted to use women's restrooms.
- No employee should be required to use a segregated facility apart from other employees because of their gender identity or transgender status.

This is a rapidly evolving area of employment law. For more information and guidance on transgender issues, please contact a member of our Labor and Employment Law Practice Group.

Please contact a member of our Labor & Employment Law Practice Group at (419) 249-7100.

Justice G. Johnson, Jr.  
johnson@marshall-melhorn.com  
419.249.7115

Ruth Meacham  
meacham@marshall-melhorn.com  
419.249.7128

Michael S. Scalzo  
scalzo@marshall-melhorn.com  
419.249.7129

Margaret J. Lockhart  
lockhart@marshall-melhorn.com  
419.249.7147

David L. O'Connell  
oconnell@marshall-melhorn.com  
419.249.7135

Roman Arce  
arce@marshall-melhorn.com  
419.249.7111

Jennifer J. Dawson  
dawson@marshall-melhorn.com  
419.249.7139

Meghan Anderson Roth  
roth@marshall-melhorn.com  
419.249.7226

Shawn A. Nelson  
nelson@marshall-melhorn.com  
419.249.7164

### About Marshall & Melhorn, LLC

Marshall & Melhorn, LLC is a full-service law firm. In addition to our Labor & Employment group, our firm has the following specialized practice areas:

Business	Intellectual Property
NonProfit	Litigation
Immigration	Medical Malpractice Defense
Tax	Estate Planning
Healthcare Law	Real Estate
Construction Law	Trusts and Estates
Creditor's Rights	Agricultural Law
School Law	Workers' Compensation

For more information about our firm, please visit:  
[www.marshall-melhorn.com](http://www.marshall-melhorn.com)

**Disclaimer:** This advisory may be reproduced, in whole or in part, with the prior permission of Marshall & Melhorn, LLC and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this advisory without first obtaining legal counsel.

© 2016 Marshall & Melhorn, LLC. *Labor and Employment Update* is intended for general informational purposes and is not intended to provide legal, tax, or other advice for a specific situation. Our Labor & Employment group would be pleased to provide you with further information or legal assistance as you require if you contact one of us directly. An attorney-client relationship is not created or continued by sending and receiving this publication.







