

# Gender Identity & The Law: Public Accommodations Training

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# AGENDA

- Introductions
- True or false activity
- Overview of the law
- Best practices and resources
- Q&A

# GOAL

- To provide Cambridge businesses with practical knowledge of gender identity protections in places of public accommodations

# DEFINITIONS

**Gender identity**, as defined under Massachusetts law, means “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.” In essence, gender identity is a person’s internal sense of their own gender. The law provides that gender identity must be “sincerely held as part of a person’s core identity.”

**Transgender** is a term that is used to refer to a person whose gender identity is different from that person’s assigned sex at birth.

# DEFINITIONS

**Public accommodation** A place of public accommodation as defined in M.G.L. c. 272, section 92A includes any place open to and serving the public. Examples of places of public accommodation include but are not limited to hotels, stores, restaurants, theaters, sports stadiums, health and sports clubs, hospitals, transportation services, museums, libraries and parks.

# TRUE OR FALSE

Bathroom options impact whether or not customers decide to visit my place of business.

## **TRUE OR FALSE**

My business already offers a gender neutral bathroom option.

# TRUE OR FALSE

I have concerns about offering a gender neutral bathroom at my place of business.

# TRUE OR FALSE

It is permissible to deny access to a place of business based on someone's gender identity.



# TRUE OR FALSE

Restaurants are required to allow people access to a restroom that is consistent with their gender identity.

# OVERVIEW OF MASSACHUSETTS ANTI-DISCRIMINATION LAWS

A number of state laws protect individuals against discrimination and harassment in housing, employment, and places of public accommodation, among other things. The following laws have been recently amended to protect individuals from discrimination based on their gender identity in the areas of employment, education, public accommodation and hate crimes.

- See M.G.L. c. 151B (employment and housing discrimination);
- M.G.L. c. 151C (fair educational practices);
- M.G.L. c. 272, Sections 92A, 98 and 98A (public accommodations);
- M.G.L. c. 265, Section 39; and
- M.G.L. c. 22C, Section 32 (hate crimes)

# OVERVIEW OF MASSACHUSETTS ANTI-DISCRIMINATION LAWS

- Note that the Massachusetts Commission Against Discrimination (MCAD) is the primary agency for civil rights enforcement in Massachusetts
- Hate Crimes may be prosecuted by the Office of the District Attorney

# OVERVIEW OF MASSACHUSETTS ANTI-DISCRIMINATION LAWS

- M.G.L. c. 272, Sections 92A, 98, 98A: In 2016, M.G.L. c. 272 was amended to include **gender identity** as a protected class in places of public accommodation
- In sum, an individual is protected against discrimination based on their gender identity in the following areas (this list is not exclusive):
  - Employment
  - Housing
  - Credit and Mortgage Services
  - Places of Public Accommodation

# OVERVIEW OF THE LAW

## **M.G.L. c. 272, Section 92A, explained in more detail:**

A place of public accommodation is defined, in part, as “any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public.”

Examples:

- retail stores, restaurants, malls, public agencies, parks, beaches, roads
- businesses that provide services, i.e. loan companies, cab services, insurance companies, testing services
- law also applies when an individual is denied access to a public place, benefit, process or proceeding (for example, a public agency that denies an individual the opportunity to apply for a taxi driver’s license based on the person’s gender identity would violate the public accommodation law)

# OVERVIEW OF THE LAW

## Prohibited Acts - M.G.L. c. 272, Section 98

- **No refusal of service**
  - Places of public accommodation may not discriminate against, or restrict a person from services because of that person's gender identity
  - For example, a hotel or motel can't refuse booking a room for a person because of gender identity
  - Certain exceptions apply to religious organizations

# OVERVIEW OF THE LAW

## Prohibited Acts - M.G.L. c. 272, Section 98

- **No disparate treatment**
  - All persons, regardless of gender identity, shall have the right to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation.
  - For example, if a supermarket bags groceries for customers, it must bag groceries for a person regardless of gender identity

# OVERVIEW OF THE LAW

## Prohibited Acts - M.G.L. c. 272, Section 92A

- **No discriminatory advertisement**

- A place of public accommodation can't distribute, publish or display an advertisement, notice, or sign (i.e. folder, book, or pamphlet, whether written, painted, or printed) intended to discriminate against or actually discriminating against persons based on their gender identity



# OVERVIEW OF THE LAW

## **Prohibited Acts – Additional Examples**

- A restaurant refuses to seat a group of transgender people because “it’s a quiet restaurant and they will draw too much attention”
- A hotel refuses to host a conference of transgender individuals

# OVERVIEW OF THE LAW

## M.G.L. c. 272, Section 92A

- **Must ensure equal access to sex-segregated facilities**
  - If a place of public accommodation lawfully separates access to a place or portion of a place based on sex, it must grant admission to that place consistent with a person's gender identity
  - For example: bathrooms, locker rooms, swimming pool changing rooms
  - Note that the law does not require construction of a new gender neutral bathroom

# OVERVIEW OF THE LAW

## **Proof of Gender Identity**

- State's public accommodation law permits someone's gender identity to be based on the person's sincerely held belief
- Surgery not required
- Requiring proof of documentation of someone's gender identity is improper except when gender identity needs to be established (such as when joining a health or sports club)

# OVERVIEW OF THE LAW

## **Proof of Gender Identity**

- A place of public accommodation may not request documentation solely to harass, intimidate, or otherwise discriminate against a person based on gender identity
- Each complaint of discrimination will be reviewed on a case-by-case basis

# OVERVIEW OF THE LAW

## Fines and Penalties

**M.G.L. c. 272, Section 98:** It is a **violation** of the law for any individual **to aid or incite** another in making a distinction, discriminating against or restricting an individual from a place of public accommodation on the basis of gender identity.

- Max fine = \$2500 or
- Max 1 year imprisonment or both
- Also, damages paid to the aggrieved person

**No Retaliation** Law prohibits retaliating against an individual for opposing a discriminatory practice or participating in an investigation or proceeding; prohibits employers from giving an employee a negative reference in retaliation for engaging in protected activity.

BEST PRACTICES

SIGNAGE

WELCOMING

TRAINING

# SIGNAGE & WELCOMING



# SIGNAGE & WELCOMING



**#HATEHASNOBIZHERE**





# POLICY & TRAINING

## **Best Practices**

- Establish grievance procedure and investigate/take appropriate action
- Provide regular trainings to staff to educate about law
- Enact non-discrimination policy and/or revise non-discrimination policies to include gender identity
- Incorporate in any diversity/anti-harassment trainings information about transgender individuals, whether or not there are transgender employees present
- Prohibit derogatory comments from employees/clients/vendors; promptly investigate and discipline persons who engage in discriminatory conduct
- Use names/pronouns/gender identity consistent with the person - mirroring language
- Avoid gender-specific dress codes

# POLICY & TRAINING

## **Law Requires**

- Provide members of the public and employees access to bathrooms consistent with their gender identity
- No refusal or restriction in service
- No disparate treatment
- No discriminatory advertising
- No retaliating against someone for engaging in protected activity, i.e. opposing discriminatory practices

# CAMBRIDGE RESOURCES

## **Cambridge Human Rights Commission**

51 Inman Street, 2<sup>nd</sup> Floor

Cambridge, MA 02139

617-349-4396

Email: [hrc@cambridgema.gov](mailto:hrc@cambridgema.gov)

Website: <https://www.cambridgema.gov/Department/s/humanrightscommission>



# CAMBRIDGE RESOURCES

## **Cambridge LGBTQ+ Commission**

617-349-3355

[lgbtqpluscommission@cambridgema.gov](mailto:lgbtqpluscommission@cambridgema.gov)



# CAMBRIDGE RESOURCES

## **Cambridge Inspectional Services Department**

(for questions regarding bathroom renovation requirements)

831 Massachusetts Avenue, 1<sup>st</sup> Floor

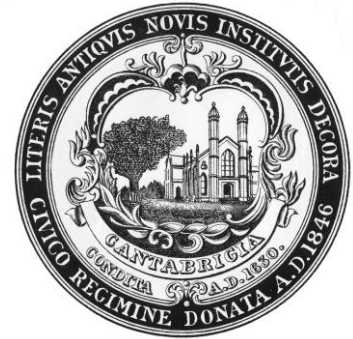
Cambridge, MA 02139

617-349-6100

Leo Tuccinardi, Plumbing and Gas Inspector– 617-349-6115

Frank Atchue, Plumbing and Gas Inspector – 617-349-6116

<https://www.cambridgema.gov/inspection/aboutus>



# CAMBRIDGE RESOURCES

## **Cambridge Commission for Persons with Disabilities**

51 Inman Street, 2<sup>nd</sup> Floor

Cambridge, MA 02139

617-349-4692

Email: [ccpd@cambridgema.gov](mailto:ccpd@cambridgema.gov)

Website: <https://www.cambridgema.gov/DHSP/programsforadults/ccpd>

# ADDITIONAL RESOURCES

## **Massachusetts Commission Against Discrimination**

One Ashburton Place, Rm. 601

Boston, MA 02108

617-994-6000

Website: <https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>

# ADDITIONAL RESOURCES

## **Massachusetts Attorney General's Office**

Amanda Hainsworth, Assistant Attorney General

Civil Rights Division

One Ashburton Place

Boston, MA 02108-1518

617-963-2917 (main)

617-963-2618 (direct)

Email: [Amanda.Hainsworth@mass.gov](mailto:Amanda.Hainsworth@mass.gov)

Website: <http://www.mass.gov/ago/consumer-resources/your-rights/civil-rights/public-accomodation.html>



# ADDITIONAL RESOURCES

## **Massachusetts Transgender Political Coalition**

PO Box 960784

Boston, MA 02196

617-778-0519

*List of Resources for Transgender Individuals*

[http://www.masstpc.org/mediawiki/index.php?title=MTROLwiki:Community\\_Portal](http://www.masstpc.org/mediawiki/index.php?title=MTROLwiki:Community_Portal)

Q&A