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Frequently Asked Questions about Civil Rights and Gender-Segregated Facilities

In 2006, the Legislature added “sexual orientation” as a protected class under the Washington Law Against Discrimination. *See* RCW 49.60.030. Under state law, it is illegal to discriminate on the basis of sexual orientation in housing, employment, credit and insurance transactions, schools, government offices, and at businesses that are open to the public. Illegal discrimination on the basis of sexual orientation includes discrimination on the basis of gender expression or gender identity. RCW 49.60.040(26).

In December 2015, the Washington State Human Rights Commission issued a set of rules clarifying provisions of the Washington Law Against Discrimination that prohibit discrimination on the basis of sexual orientation, gender expression, and gender identity. One of the rules, WAC 162-32-060, explains how the law applies to gender-segregated facilities like locker rooms and restrooms.

The Office of the Attorney General has received questions from the public about how the rule applies to men’s and women’s facilities. Answers to some of the most common questions are provided below.

How does the rule change the law?

The law has remained the same since discrimination based on sexual orientation, gender identity, and gender expression was prohibited in 2006. All the 2015 rule does is clarify that a transgender person cannot be excluded from a gender-segregated facility that is consistent with the person’s gender identity.

Is it true that the rule entitles everyone to use whichever locker room they want?

No. Where locker rooms are separated by gender, only men—including transgender men—may use the men’s locker room. Likewise, only women—including transgender women—may use the women’s locker room. Contrary to some concerns, the law does not create a requirement that all locker rooms now be “unisex.” The law also does not allow men to use women’s locker rooms.

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What if someone pretends to be a transgender person in order to use a locker room or restroom for inappropriate reasons?

The rule does not protect one who pretends to be transgender in order to use a facility that does not correspond to their gender identity. A person who pretends to be transgender in order to gain access to a gender-segregated facility may be required to leave or be subject to criminal prosecution.

If you have concerns about whether someone is properly in a locker room or restroom, you may ask legitimate, respectful questions about the person's presence. Please remember that violent behavior or hostile or confrontational questioning is inappropriate and often illegal. If you prefer, you may speak directly with the owner or manager of the facility to express your concerns.

Does the rule prevent me from speaking up if I see inappropriate or illegal behavior in a locker room or restroom?

No. The rule does not grant permission for anyone to behave inappropriately or engage in illegal behavior. If you suspect that something inappropriate or illegal is happening in a locker room or restroom, you should alert the owner, manager, or a law enforcement official.

Does the rule prevent a business from setting rules about appropriate behavior in locker rooms and restrooms?

No. Private recreational facilities and gyms, as well as facilities run by our state and local governments, have always been free to adopt rules about behavior in locker rooms and restrooms. Rules governing appropriate behavior apply to everyone regardless of gender identity. As long as the rules are applied consistently to all users, facilities are free to adopt and enforce a "code of conduct" or similar set of behavior rules for locker rooms and restrooms.

I want as much privacy as possible when I use the locker room—does the rule say anything about that?

Many of us prefer privacy when using locker rooms and restrooms. Although the rule does not require businesses to construct new, private facilities, the rule encourages facilities to provide options for privacy where possible. This might include single-use bathrooms, private changing areas, or private showers. Where feasible, the rule encourages facilities to consider ways to provide privacy for any person who desires it.

Where can I find additional information?

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The new section of rules is codified at WAC 16-32. The rules cover more than locker rooms and restrooms, and also address illegal discrimination and harassment on the basis of sexual orientation, gender identity, and gender expression in employment, housing, school, and other contexts. The specific rule related to gender-segregated facilities is located at WAC 162-32-060.

A guide to civil rights in Washington, prepared by the Attorney General's Office, is available at: <http://www.atg.wa.gov/wing-luke-civil-rights-unit>. Information about the Washington State Human Rights Commission's rulemaking process is available at: <http://www.hum.wa.gov/rule-making>. The Human Rights Commission's rulemaking File for the sexual orientation and gender identity rules may be found at: <http://www.hum.wa.gov/rule-making/rulemaking-file--sexual-orientationgender-identity>. Finally, the Human Rights Commission has prepared a resource titled, "Frequently Asked Questions Regarding WAC 162-32-060," and it may be found at: http://www.hum.wa.gov/admin/functions/file_views.php?media_id=223