

Pennsylvania Human Relations Act Guidance on Sex Discrimination Act

On August 2, 2018, the Pennsylvania Human Relations Commission (“PHRC”) released a Guidance on discrimination on the basis of sex under the Pennsylvania Human Relations Act (“PHRA”). “Sex” is a protected class under the PHRA, which means that individuals can raise claims of discrimination on the basis of gender. The PHRC has expanded the definition of “sex” to include the following:

- a) **Sex Assigned at Birth:** The assignment and classification of individuals at birth, including but not limited to male, female, or intersex and the related physical differences between the sexes, such as pregnancy.
- b) **Sexual Orientation:** An inherent or immutable enduring emotional, romantic, or sexual attraction to other people, including but not limited to: heterosexual, homosexual, and bisexual.
- c) **Gender Identity:** One’s innermost concept of self as male, female, a blend of both or neither. How individuals perceive themselves and what they call themselves. One’s gender identity can be the same or different from their sex assigned at birth.
- d) **Gender Expression:** External appearance of one’s gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.
- e) **Gender Transition:** The process by which some people strive to more closely align their internal knowledge or gender with its outward appearance. Some people socially transition, whereby they might be dressing, using names and pronouns and/or be socially recognized as another gender. Others undergo physical transitions in which they modify their bodies through medical interventions.
- f) **Transgender:** An umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation.

Thus, the term “sex” under the PHRA, now includes the abovementioned classifications. As of August 2, 2018, the Commission will accept complaints based on the new inclusive definition of sex using, “any and all legal theories available.” As you know, acceptance of a claim does not deem a finding of discrimination, rather it means the Commission will conduct an investigation.

Employers are now exposed to claims based on the six above mentioned classifications. While this expanded definition of sex exposes employers to six new types of potential claims, the defenses to the new claims are identical to those already established and used in cases of discrimination based on sex at the state and federal level.

Please contact Litchfield Cavo for information and counsel pertaining to protecting your business against discrimination claims based on sex assigned at birth, sexual orientation, gender identity, gender expression, gender transition and transgender identity, and also ensuring that your business is a safe environment for all employees.

Susan Cirilli is an attorney in Litchfield Cavo’s Philadelphia office and specializes in employment law. Susie advises on such issues and represents clients in actions already in suits.