

Frequently Asked Questions

Massachusetts law prohibits discrimination based on gender identity and expression in places of public accommodation. This FAQ is designed to help ensure compliance and make sure people know their rights, including when it comes to gender-specific spaces like men's/women's restrooms.

Q: What constitutes discrimination?

The law prohibits discrimination in places of public accommodation, including against an individual based on their gender identity or expression. Unlawful discrimination can include:

- a. Refusing, denying, or hindering access to service;
- b. Offering a different or inferior class or quality of service or a more limited set of products, goods, services, or facilities than are available to others;
- c. Advertising or otherwise publicizing that individuals are prohibited, unwelcome, or unpreferred in any way; and
- d. Harassment and intimidation.

The law prohibits discrimination by owners, operators, or employees of an establishment, as well as by other customers or members of the public.

Q: What is a public accommodation?

A public accommodation is any place “which is open to and accepts or solicits the patronage of the general public,” regardless of whether it charges for products, goods, services, or admission. Examples of public accommodations include, but are not limited to: hotels, stores, restaurants, theaters, sports stadiums, health and sports clubs, hospitals and medical practices, transportation services, museums, libraries, and parks. A public accommodation need not be a physical place accessible to individual customers, users, or patrons—for instance, a business that serves customers online or over the phone is a place of public accommodation.

Q: What is gender identity?

Gender identity is a person's internal sense of their own gender, regardless of their physical characteristics or sex assigned at birth. The law prohibits discrimination on the basis of “a person's gender-related identity, appearance or behavior.” This includes protections for people who are transgender, meaning that their gender is different than their assigned sex at birth. It also includes protections for people who are nonbinary, which means that they do not associate with being male or female. And it also includes protections for individuals whose gender expression, meaning their clothing, behavior, body characteristics or voice, may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

Q: What does the law say about access to male-only and female-only restrooms and other spaces?

The law provides that all people, including transgender and nonbinary people, may use whichever gender-specific facilities, including restrooms, locker rooms, and changing rooms, are most consistent with their gender identity. For someone who is nonbinary, this may mean that they use the facility that feels most safe to them.

An individual's gender identity cannot be assumed solely by appearance. The fact that a person who identifies as a woman, whether transgender or not, is perceived as having a "masculine" appearance is not a legitimate reason to exclude her from, or question her presence in, a women's restroom. Similarly, the fact that a person who identifies as a man may appear "feminine" is not a credible basis to exclude him from, or question his presence in, a men's restroom. And if a nonbinary person's appearance is neither traditionally "masculine" or "feminine," that appearance is not an appropriate basis to exclude that person from whichever facility they believe is consistent with their gender identity and personal sense of safety.

Q: Does the law require or prohibit gender-specific facilities, including men's/women's restrooms, locker rooms, and changing rooms?

No. Places of public accommodation may make their own decisions about whether to have gender-specific or gender-neutral restrooms, locker rooms, and changing rooms, so long as they ensure that individuals of any gender can use whichever space is most consistent with their gender identity (whether that is male, female, nonbinary, or something else). In many settings, gender-neutral facilities that also ensure adequate privacy for each patron are the best practice to ensure both privacy and inclusivity.

Some public accommodations have made a private or single-occupancy space available as an alternative to their men's/women's facilities. If a place of public accommodation chooses to offer a private space, it must make the space available on the same terms and in the same manner to all patrons, regardless of their gender identity. And it cannot require or encourage any person to use that space instead of its gender-specific facilities based on their gender identity or based on other patrons' perception of their gender identity.

Q: What should a place of public accommodation do if a patron complains about the presence of a transgender or nonbinary person in a male-only or female-only facility?

If such a complaint occurs, the place of public accommodation should remind the complaining patron that Massachusetts law protects the right of all people, including transgender and nonbinary people, to access gender-specific facilities most consistent with their gender identity and personal sense of safety, as long as the individual is not engaged in any unlawful conduct. To the extent a patron expresses concern about privacy in a restroom or changing room, a business may provide an accommodation for the patron who raises the privacy concern, including a privacy screen, curtained area, private facility, or single-stall facility to offer more privacy. A business cannot require a transgender or nonbinary person to use such privacy accommodations on the basis of another individual's concerns.

Q: What should a place of public accommodation do if a patron harasses or interferes with another patron on the basis of gender identity?

If a patron engages in harassment or otherwise attempts to interfere with another individual's use of a public accommodation on the basis of gender identity or expression, they may be in violation of the public accommodations law. Under these circumstances, an employee, manager, or owner of the public accommodation should ask the harassing patron to leave the premises—as they would with any customer or patron who harasses other patrons or interferes with other patrons' ability to use the public accommodation.

Q: What does the law say about people using gender identity for an improper purpose?

The law does not permit a person to assert gender identity for an “improper purpose.” This means that a person may not fraudulently assert a gender identity to gain access to a gender-specific facility in which they would otherwise not be permitted, including circumstances where such fraudulent access is intended to protest the law permitting people to use gender-specific facilities aligned with their gender identity. It also means that a person may not assert a gender identity for the purpose of engaging in unlawful conduct. Examples of unlawful conduct include:

- a. Using or loitering in a facility for the purpose of observing other patrons;
- b. Harassing an employee or patron;
- c. Threatening or engaging in violence towards another person;
- d. Photographing or videotaping other patrons without permission; or
- e. Other violations of the law, including criminal law.

The experience of Massachusetts and other states with similar laws forbidding discrimination in public accommodations on the basis of gender identity has shown that misuse of gender-specific facilities is exceedingly rare. Employees of a place of public accommodation should generally presume that an individual is using the correct facility (the one most consistent with their gender identity and personal sense of safety), if the person is not engaged in any unlawful conduct.

Q: When is it appropriate to request documentation of a person's stated gender identity?

In the vast majority of cases, it is not appropriate for a place of public accommodation to request documentation of an individual's stated gender identity. However, a request for documentation may be permissible in the limited circumstance in which the person is, or is seeking to become, a member in an organization that regularly requires documentation of gender for all members on an equal basis, such as a health or sports club. In these limited circumstances, an individual's gender identity may be demonstrated by any evidence that the gender identity is sincerely held as part of a person's core identity. That may include a driver's license or other government issued identification, but a public accommodation should also accept alternative documentation such as a letter from a healthcare provider, friend, clergy, or family member.

Requesting documentation of gender identity may also be appropriate in certain health care contexts, such as when an insurance company is assessing whether the provision of gender-

affirming care is medically indicated and thus should be covered by a customer's health insurance policy. In such circumstances, the documentation requirements applied to gender identity should be subject to the same documentation requirements the company applies to conditions or treatments unrelated to gender identity.

A place of public accommodation may not use a request for documentation to harass, intimidate, embarrass, or otherwise discriminate against a person based on gender identity.

Q: If I experience or witness discrimination on the basis of gender identity, what can I do?

To file a complaint related to discrimination or with questions about this FAQ, contact the Civil Rights Division of the Attorney General's Office at (617) 963- 2917.