

Know. Your. Rights.

A guide to understanding protections for transgender and gender-nonconforming people under the New York State Human Rights Law.

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Empire Justice Center
Making the law work for all New Yorkers

Transgender and gender-nonconforming people have historically experienced discrimination, harassment and violence at far higher rates than other people because of their gender identities and gender expression. After decades of advocacy, the legal landscape is finally starting to recognize transgender and gender-nonconforming people as a class that deserves protection under the law.

This guide explains how the New York State Human Rights Law (HRL), specifically, protects transgender and gender-nonconforming people. It describes what unlawful discrimination looks like, and what you can do if it happens to you. This guide also contains some information about your legal rights under other state and federal laws, and gives you contact information for legal advocates and attorneys across New York State that may be able to advise you about your rights.

PLEASE NOTE: This guide provides very general information about your rights and remedies under the law, and is not meant to be or replace legal advice. If you think you have been discriminated against, you should contact a lawyer who is familiar with legal protections for transgender and gender-nonconforming people. Some legal resources are listed at the end of this guide for your convenience.



WHAT IS THE NEW YORK STATE HUMAN RIGHTS LAW?

Discrimination means treating people differently or negatively, specifically because of a trait or characteristic. The **New York State Human Rights Law (HRL)** was explicitly created to protect groups of people who regularly face discrimination in the areas of employment, housing, education, access to credit and public accommodations based on protected traits like their disability, sex and sexual orientation, among many others. If you have one of the many protected traits, then you are considered a member of a “protected class” of people that this law is meant to help. Along with the courts, the **New York State Division of Human Rights (DHR)** is the state government agency that is responsible for interpreting and enforcing the protections provided under the HRL.

DOES THE HRL PROTECT TRANSGENDER AND GENDER-NONCONFORMING PEOPLE?

Yes! In January 2016, the DHR created a new regulation (9 N.Y.C.R.R. § 466.13) that explains that the HRL protects transgender and gender-nonconforming people in the following ways:

- Sex Discrimination includes treating someone differently or negatively because of their gender identity, gender expression and transgender status;
- Sexual Harassment includes harassment based on a person’s gender identity or transgender status;
- Disability Discrimination includes discrimination based on a person’s gender dysphoria.

In other words, if you have experienced discrimination or harassment in employment, housing, education, access to credit or public accommodations in New York State because you are transgender or gender-nonconforming, or have gender dysphoria, then you may have a legal claim under the HRL.

Did You Know?

There is a common misconception that these protections are based on an executive order issued by the Governor, and won’t last beyond his administration – but this is not true! Yes, executive leaders (including governors) can issue an executive order to make policy decisions without the input of the legislature (our elected officials), or even the public. However, the HRL protections discussed in this guide are based on a regulation, not an executive order. In order to create a new regulation, a government agency must go through a formal rulemaking process that involves gathering feedback from the general public before anything becomes law. This particular regulation interprets the HRL’s definitions of “sex” and “disability” in the same way that several courts have interpreted the law over the years: as protecting transgender and gender-nonconforming people. Therefore, this regulation is much stronger and longer-lasting than an executive order, and is not in danger of going anywhere any time soon.

WHAT IS ILLEGAL DISCRIMINATION UNDER THE HRL?

The HRL protects people in five major areas of life:

EMPLOYMENT, HOUSING, EDUCATION, ACCESS TO CREDIT, AND PUBLIC ACCOMMODATIONS.

Each of these categories are defined and explained in more detail below.

Generally speaking, it’s sometimes obvious when illegal discrimination happens to you as a transgender or gender-nonconforming person, but other times it can be harder to figure out. If you aren’t sure, a good place to start is by asking yourself, “Do I believe I was treated differently or negatively because of my gender identity and expression? Or because I am transgender? Or because of my gender dysphoria?” If you answer “yes” to any of these questions, then you may have experienced illegal sex or disability discrimination, and may have rights under the HRL.

Below we’ve included some examples of treatment that might be considered discrimination under the HRL. If possible, speak with an attorney about your particular situation so you can figure out what your rights are and how to exercise them.



EMPLOYMENT

You have the right to obtain or maintain employment that is free of discrimination or harassment based on your gender identity, gender expression, transgender status or gender dysphoria.

The HRL covers employers with at least four (4) employees. However, you may still be protected even if your employer has less than four employees if you are either a domestic worker (i.e., working in another person's home caring for children or an elderly person, cleaning, gardening, doing home repairs or other domestic jobs), or if the discrimination you experienced specifically involves sexual harassment.

Examples of unlawful employment discrimination could include:

- Asking about your gender or transgender status during a job interview
- Refusing to hire you because of your gender identity or expression
- Passing you up for promotion or demoting you
- Subjecting you to increased monitoring of your work or giving you negative performance reviews because of your actual or perceived transgender status
- Refusing to let you access a restroom (or other single-sex facility) appropriate to your gender identity
- Refusing to use your preferred name, pronouns or title (Ms., Mr., Mx., etc.)
- Failing to address sexual harassment, jokes, pranks, invasive or personal questions, touching, hostility or other actions by colleagues or supervisors that contribute to a disrespectful or hostile work environment
- Threatening to fire, demote or otherwise retaliate against you if you try to access health care to treat your gender dysphoria
- Setting different terms of employment for you than for non-transgender employees, including different benefits, work assignments or pay

Did You Know?

Transgender and gender-nonconforming people are also protected from employment discrimination by a federal law commonly known as Title VII, which is short for Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees.

If you feel you have been discriminated against by an employer, you may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) within 300 days of the discriminatory event. This is a shorter deadline than with the DHR, which is one year (365 days) from the date of the discriminatory event.

Whether you file with the EEOC or the DHR, your complaint will be automatically cross-filed with the other agency. To learn more about your rights under federal law, check out the EEOC website.¹

HOUSING

You have the right to obtain or maintain housing free of discrimination or harassment based on your gender identity, gender expression, transgender status or gender dysphoria. This includes buying, renting or leasing a home, apartment or business space. The protections apply to privately owned housing, as well as public or government subsidized housing.

Examples of unlawful discrimination in housing could include:

- Refusing to rent, lease or sell housing to you because of your gender identity or expression
- Evicting you upon finding out that you are transgender or gender-nonconforming
- Charging you more for rent than tenants who are not transgender or gender-nonconforming
- Experiencing harassment, assault or other punitive action from a landlord because of your gender identity or expression
- Refusing to allow you into a homeless or emergency shelter because of your gender identity or expression, or refusing to allow you to access a single-sex shelter appropriate to your gender identity
- Not allowing you to use or enjoy access to all the facilities appropriate to your gender identity, such as bathrooms, changing rooms or sleeping accommodations

Did You Know?

Transgender and gender-nonconforming people are also protected from housing discrimination by a federal law called the Fair Housing Act and regulations issued by the U.S. Department of Housing and Urban Development (HUD). A fair housing complaint must be filed with HUD within one year of when the discriminatory housing practice occurred or ended. Whether you file a complaint with HUD or the DHR, your complaint will be automatically cross-filed with the other agency so you don't risk missing any filing deadlines.

To learn more about your rights under this federal law, check out their website.²

EDUCATION

You have the right to obtain an education free of discrimination or harassment based on your gender identity, gender expression, transgender status or gender dysphoria.

Because of a 2012 New York State Court of Appeals decision, students at schools that receive at least some public funding are not currently protected by the HRL. This may include private kindergartens, elementary and secondary schools, academies, colleges, universities or professional schools. Students at private, non-religious, tax-exempt schools are protected, but that means only a very small fraction of New York State students are currently covered by the HRL.

The good news is that transgender and gender-nonconforming public school students do have rights under other laws. In May 2016, the U.S. Department of Education (DOE) issued significant guidance about how Title IX of the U.S. Education Amendments of 1972 protects transgender and gender-nonconforming public school students from discrimination and harassment in educational settings that receive federal funding.³ The DOE also issued a document called “Examples of Policies and Emerging Practices for Supporting Transgender Students,” which provides guidance to public school districts on how to treat transgender and gender-nonconforming students with respect and dignity.⁴ The DOE document heavily references a similar guide published in July 2015 by the New York State Education Department (NYSED) regarding transgender and gender-nonconforming students in New York State specifically, which can be found here.⁵

Also, the New York State Dignity for All Students Act (DASA) prohibits bullying and cyberbullying of all students, including transgender and gender-nonconforming students. Although there is no clear private right of action to sue under DASA, students can file DASA complaints with appropriate staff people at their schools in order to trigger investigations of instances as they occur.

Examples of unlawful education discrimination could include:

- Refusing access to a gender-appropriate restroom (or other single-sex facilities)
- Refusing to use your preferred name, pronouns or title (Ms., Mr., Mx., etc.)
- Refusing you access to the same educational programs, clubs, internships, activities and other opportunities available to students who are not transgender or gender-nonconforming
- Threatening to lower your grade, fail you or retaliate against you if you express your gender identity
- Failing to address sexual harassment, jokes, pranks, invasive or personal questions, touching, hostility or other actions by fellow students, teachers, administrators or other school staff that contribute to a disrespectful or hostile learning environment.

ACCESS TO CREDIT

You have the right to access credit and lending free of discrimination or harassment based on your gender identity, gender expression, transgender status or gender dysphoria.

“Credit” can include things such as a credit card, loan, mortgage, etc. You can still be denied credit or lending for other legal reasons that are not related your gender identity or expression, such as if your income is too low, your other debt is too high, you have too many delinquencies or late payments in your credit history, or you have little or no credit history.

Examples of unlawful credit discrimination could include:

- Refusing to grant you access to credit specifically because of your gender identity or expression
- Granting you a loan with less favorable terms (such as a higher interest rate, higher minimum payments, higher origination fees, etc.) specifically because of your gender identity or expression



PUBLIC ACCOMMODATIONS

You have the right to access and use public spaces – otherwise known as “places of public accommodation” – free of discrimination or harassment based on your gender identity, gender expression, transgender status or gender dysphoria.

“Public accommodations” is a broad category of places, including but not limited to restaurants and bars, stores, public transportation, public libraries, hotels, theaters, places of public recreation, food banks, homeless and domestic violence shelters, pharmacies, hospitals, emergency rooms, clinics, many doctor’s offices, and any other place that is available to the general public. It also includes government offices, such as local Social Services Departments or Departments of Motor Vehicles.

Jails, prisons or other detention facilities are not places of public accommodation.

Examples of unlawful discrimination in places of public accommodation could include:

- Refusing to treat you at an emergency room because of your gender identity or expression
- Making you leave a restaurant or place of recreation because management is concerned that your presence as a transgender or gender-nonconforming person will make other patrons “uncomfortable”
- Requiring you to show identification with a gender marker before you are allowed to access to appropriately gendered facilities or programs
- Not allowing you access to a public space unless your clothing or grooming conform to certain gender stereotypes based on your legal name or gender marker
- Not allowing you to use the restroom or sex-specific facilities consistent with your gender identity, or forcing you to use a gender neutral or otherwise separate restroom when that is not your choice



WHAT SHOULD I DO IF I HAVE EXPERIENCED UNLAWFUL DISCRIMINATION OR HARASSMENT?

Harassment or discrimination can be traumatizing, and can leave you feeling angry, ashamed, afraid and vulnerable. You are not alone. If it happens to you, seek help and support from a friend or other trusted person or professional who can talk with you about what happened. This can make a world of difference while you decide on next steps.

Document everything. Write down as many details as possible while your memory is fresh. Who was involved? What did they do or say? When and where did it happen? Did anyone else see or hear what happened? Be sure to save and protect any proof you may have, such as letters, emails, voicemails, videos or photographs, texts, medical records, police reports, etc.

Weigh your options. There may be several approaches to addressing what happened to you, depending on the circumstances. For example, you may want to file a grievance internally with management, file a police report, ask a local community organization to advocate for you, file a formal complaint with a local, state, or federal government agency, and/or sue in court. Some options may cost money while others are free. Some options may be informal, while others may involve a legal filing with important deadlines to consider. Sometimes, simply knowing your rights and directly advocating for yourself can be enough to get what you want or need.

Although you do not need an attorney to file a complaint with government agencies like the DHR or the EEOC, it may be helpful to consult with an attorney about your rights and what next steps might be most useful for you in your specific situation.

Did You Know?

Thanks to **Section 1557 of the Affordable Care Act (ACA)**, transgender and gender-nonconforming people are also protected from discrimination by any hospitals, health care centers, clinics, etc., that receive federal funding from the U.S. Department of Health and Human Services (HHS), and by insurance companies that participate in the Marketplaces. A complaint can be filed with HHS Office of Civil Rights (OCR) within 180 days of when you knew that a discriminatory event happened. Complaints filed with HHS OCR will not be automatically cross-filed with the DHR. To learn more about your rights under this federal law, check out their website.⁶

HOW CAN THE HRL HELP ME?

If you believe you have experienced unlawful harassment or discrimination because you are transgender or gender-nonconforming, then you can use the HRL in two important ways:

1. File a DHR Complaint

The DHR complaint process is completely free, user-friendly and does not require that you hire an attorney (also known as filing “pro se”). A DHR complaint must be filed within one (1) year from the date that the discrimination or harassment occurred – or, if the discrimination or harassment occurred over a period of time, within one (1) year from the date that it finally ended.

OR

2. Sue in State or Federal Court

You have the option of skipping the DHR complaint process and filing a civil suit in court instead. This must be done within three (3) years from the date that the discrimination or harassment occurred – or, if the discrimination or harassment occurred over a period of time, within three (3) years from the date that it finally ended. Court actions are often long, complicated and expensive, and therefore difficult to do on your own without an attorney. We strongly recommend that you speak to an attorney about your case before pursuing this option.

The rest of this guide focuses the DHR complaint process because it’s more accessible for most transgender and gender-nonconforming New Yorkers, especially if an attorney is not available or able to represent you.

Did You Know?

There are several other laws in New York State that protect transgender and gender-nonconforming people, as well as lesbian, gay and bisexual people. For example, the Sexual Orientation Non-Discrimination Act (SONDA) added sexual orientation as a protected trait under to the HRL. The Dignity for All Students Act (DASA) aims to protect LGBT and other students from school bullying and cyberbullying. Prior to 2016 when the DHR clarified protections for transgender and gender-nonconforming people under the HRL, many cities and counties across New York State adopted local ordinances to protect LGBT people against discrimination. In 2015, New York City issued guidance clarifying how it would enforce its own citywide protections for transgender and gender-nonconforming people specifically.⁹

For more information about these and other laws, check out the New York State Attorney General’s website.¹⁰

HOW DO I FILE A COMPLAINT WITH THE DHR?

You can file a complaint in person, by mail or by fax at your nearest DHR office – there are 12 offices throughout the state. Call DHR toll-free at (888) 392-3644, or visit their website to download a complaint form and the address of your closest regional office.⁷

If you file the complaint on your own, try to be as detailed as possible when you fill out the complaint form. For each incident of discrimination you must provide the

- Date that the discriminatory event took place
- Location in which you experienced the event of discrimination or harassment
- Names of individuals who caused you harm or were witnesses to the discrimination or harassment
- Details of the incident

If you need help writing your complaint, staff members at the regional DHR office can provide free assistance in drafting and filing your complaint, either in person, by phone or by mail. You can also try contacting an attorney or a local community advocacy organization for assistance.

If you are filing a complaint without an attorney’s help, we recommend that you use your current legal name when filling out the complaint, followed by your preferred name if it’s different from your legal name. For example, you could list your name as “Legal Name (a.k.a. Preferred Name)”. You should also include more information about your preferred name and pronouns, gender identity and gender expression, transgender status, and/or gender dysphoria in the body of the complaint, if it is important to your case.

Once your complaint is completed, you will need to swear that everything in it is true by signing it with your current legal name in front of a notary public – a person who officially stamps your document as a witness to your signature. The printed name and signature on your complaint must match the name on your valid photo identification, which you will need to show the notary public at the time you sign the complaint. Every DHR office has a notary public on duty to help you free of charge. You can also find notaries public at your local bank, town or city hall, county courthouse and other locations, though they may charge a small fee for the notary’s services.

When you submit your complaint, be sure to attach copies of any documents that you think will help DHR investigate your case, such as records of discriminatory or harassing messages, paystubs, performance evaluations, disciplinary notices, a copy of your lease, school records or any other information that will support your claim of discrimination or harassment. Always keep a copy of your complaint and all attachments for your own records, and proof of the date you filed them with the DHR (like a receipt from the post office). To find the closest regional DHR office, click here.⁸

WHAT HAPPENS AFTER I FILE A DHR COMPLAINT?

After you file your complaint, the DHR will usually complete an investigation of your case within 180 days (about 6 months). During this time, the DHR will require the respondent (the person or entity that you are writing the complaint about) to respond to your complaint and to send in documents and other information that helps the DHR's investigation. The respondent may try to deny the claims you made against them, poke holes in your story, or provide justifications for their behavior or actions. You will then have an opportunity to send your own response to the DHR, at which time you can argue against each and every point that the respondent made.

The DHR will also facilitate settlement negotiations between you and the respondent. This gives both parties opportunities to agree on a way to quickly settle the issues in your complaint.

After DHR finishes its investigation, it will decide whether it found probable cause in your case. If the DHR finds probable cause, it means that it is more likely than not that you experienced illegal discrimination. At that point, your case will move forward to a public hearing to be decided by an Administrative Law Judge (ALJ). If you do not have an attorney representing you already, the DHR will assign one of their attorneys to present your case to the ALJ on your behalf. If the ALJ decides in your favor, you may be entitled to a variety of remedies (see below).

Keep in mind that your complaint may be dismissed at several points throughout the process. For example, your case will be dismissed after DHR's investigation if there is no probable cause finding, or if the ALJ doesn't think the DHR has authority to decide your case, or if the ALJ doesn't find illegal discrimination at the end of the public hearing. If your complaint is dismissed at any point, you can appeal that decision in a New York State Supreme Court. It is strongly recommended that you talk with an attorney about whether or not to appeal.

WHAT CAN I GET OUT OF THE DHR COMPLAINT PROCESS?

If the DHR Administrative Law Judge finds that unlawful discrimination occurred, you may be awarded a number of possible remedies, including but not limited to:

- An injunction, which requires the person or entity that discriminated against you to stop doing so
- Getting your job or housing back, if you lost them due to discrimination
- Compensatory damages for lost wages or harm you experienced (e.g., pain and suffering, emotional anguish, humiliation)
- Punitive damages, which is money the respondent has to pay strictly as a punishment for bad behavior – please note that punitive damages are only available in cases of housing discrimination
- Require the person or entity that discriminated against you to go through mandatory cultural competency or sensitivity training, and/or to develop transgender-inclusive policies and procedures

Keep in mind that this is a civil complaint, not a criminal charge, and so wrongdoers will not be sent to jail as a result of your complaint.

RESOURCES

Below is a list of legal services organization and law projects that have helped transgender and gender-nonconforming people who have experienced discrimination.

NEED ASSISTANCE OUTSIDE OF NEW YORK CITY?

Empire Justice Center

LGBT Rights Project (serves New York State outside New York City)
Rochester, NY
(585) 295-5721

Legal Services of the Hudson Valley

LGBTQ Legal Project
White Plains, NY
(914) 949-1305

Volunteer Lawyers Project of Onondaga County, Inc.

Syracuse, NY
(315) 579-2576

NEED ASSISTANCE IN NEW YORK CITY?

Legal Services NYC

LGBTQ Advocacy
Queens, South Brooklyn, Manhattan
(917) 661-4500

New York Legal Assistance Group (NYLAG)

LGBTQ Law Project
New York, NY
(212) 613-5000 ext. 5107

Sylvia Rivera Law Project

New York, NY
(212) 337-8550

Transcend Legal

New York, NY
(347) 612-4312

Urban Justice Center

Peter Cicchino Youth Project
New York, NY
(877) 542-8529

ADDITIONAL RESOURCES

New York City Commission on Human Rights, Legal Enforcement Guidance on the Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23)2; New York City Admin. Code: http://www.nyc.gov/html/cchr/downloads/pdf/publications/GenderID_InterpretiveGuide_2015.pdf

New York State Office of the Attorney General, Laws Protection Lesbian, Gay, Bisexual, Transgender (LGBT) New Yorkers: <http://www.ag.ny.gov/civil-rights/lgbt-rights>

IMPACT LITIGATION

Some organizations only take cases that they think could have a big impact on the greater community. Although they might provide you with information and advice, they may not always be able to directly represent you.

Lambda Legal

Transgender Rights Project
New York, NY
(866) 542-8336

New York Civil Liberties Union (NYCLU)

New York, NY
(212) 607-3300

Transgender Legal Defense & Education Fund (TLDEF)

New York, NY
(646) 862-9396

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END NOTES

1. United States Equal Employment Opportunity Commission website: www.eeoc.gov
2. United States Department of Housing & Urban Development (HUD), Fair Housing and Equal Opportunity website: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp
3. United States Department of Justice (DOJ) and United States Department of Education (DOE), Dear Colleague Letter on Transgender Students, May 13, 2016: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>
4. United States Department of Education (DOE), Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016: <http://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>
5. New York State Education Department (NYSED), Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender-Nonconforming Students, July 2015: http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf
6. United States Department of Health & Human Services (HHS), Section 1557 of the Patient Protection and Affordable Care Act: <http://www.hhs.gov/civil-rights/for-individuals/section-1557/>
7. New York State Division of Human Rights (DHR): <http://www.dhr.ny.gov/>
8. New York State Division of Human Rights, Regional Office Contact Information: <http://www.dhr.ny.gov/contact-us>

ABOUT EMPIRE JUSTICE CENTER

Empire Justice Center is a statewide, public interest law firm with offices in Albany, Rochester, White Plains, Yonkers and Central Islip (Long Island). Empire Justice focuses on changing the “systems” within which poor and low-income families live. With a focus on poverty law, Empire Justice undertakes research and training, acts as an informational clearinghouse, and provides litigation backup to local legal services programs and community based organizations. As an advocacy organization, Empire Justice engages in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination. As a non-profit law firm, Empire Justice provides legal assistance to those in need and undertakes impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

ABOUT OUR LGBT RIGHTS PROJECT

Empire Justice Center is committed to fighting day-to-day and systemic discrimination faced by lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) people around New York State. We do this by providing cultural competency and substantive legal trainings to attorneys, judges and court administrators, as well as giving “Know Your Rights” presentations to LGBTQI community members. We also advocate with policymakers and legislators to make laws more inclusive of LGBTQI people, and provide free legal services to low income LGBTQI clients in Western and Central New York who:

- Experience discrimination or harassment in employment, education, housing, access to credit or public accommodations
- Are denied access to LGBTQI-inclusive health care or health insurance coverage
- Need assistance obtaining a legal name change
- Need assistance preparing advance health directives and living wills
- Are aging/elderly and experience issues with caretakers, nursing homes or residential facilities that do not respect their sexual orientation, gender identity or gender expression
- Are veterans who need assistance updating a discharge status or the legal name on military records

To request more information or assistance from Empire Justice Center’s LGBT Rights Project, please contact:

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(he/him/his pronouns)
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