

August 21, 2019

Angela Fernandez, Commissioner
New York State Division of Human Rights
One Fordham Plaza, Fourth Floor
Bronx, NY 10458

Dear Commissioner Fernandez:

Empire Justice Center writes to strongly support the proposed amendment to section 466.13 of Title 9 NYCRR regarding gender identity and expression, which appeared in the July 3, 2019 edition of the New York State Register.

Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, Westchester and Long Island. Empire Justice Center advocates for low-income New Yorkers using litigation, policy advocacy, and community education as tools to improve the lives of our clients and communities. Our mission is to protect and strengthen the legal rights of people in New York State who are poor, disabled or disenfranchised through systems change advocacy, training and support to other advocates and organizations, and high quality direct civil legal representation. Since its founding, Empire Justice Center has worked to oppose discrimination and challenge barriers to equality, including barriers based upon sexual orientation and gender identity and expression.

The Gender Expression Non-Discrimination Act (GENDA) was intended to expand the protections already afforded to transgender and gender non-conforming residents of New York. The regulatory impact statement makes it clear that the regulations will be expanding the protections of transgender and gender non-conforming New Yorkers under the New York Human Rights Law, and therefore that the protections already in place will remain.

The regulatory impact statement notes that, because discrimination based on gender identity or expression is sex discrimination, the additional protections based upon sex discrimination will still apply to discrimination based on gender identity or expression. Harassment based on gender identity or expression is sexual harassment, and is therefore entitled to the additional protections from sexual harassment, including protection in all work places and not just those with four or more employees. Discrimination based on gender dysphoria is discrimination based on disability, and therefore entitled to disability protections including reasonable accommodations. To conform the regulations to GENDA, the amended regulations additionally add gender identity and expression as a protected category in itself, as well as to mirror the definition of “gender identity” to the definition in GENDA.

Transgender and gender non-conforming persons experience disturbingly high levels of discrimination and violence. Trans and GNC people are still routinely denied basic needs like health care and shelter. According to the New York State Report of the 2015 U.S. Transgender Survey, 26% of transgender New Yorkers reported being fired, denied promotion, or not hired because of their gender identity or expression; 21% had experienced housing discrimination such as eviction or being denied housing in the past year; and 74% of K-12 students who were out or perceived as transgender experienced harassment or discrimination at school, with 14% being forced to leave their school altogether. With such barriers, it is no surprise that a stunning 37% of transgender New Yorkers are living in poverty.

These proposed regulatory changes will help ensure that when New Yorkers experience harassment or discrimination based upon their gender identity or expression, whether that harassment or discrimination occurs in the workplace, housing, place of public accommodation or school, they will have legal recourse including the complaint process under the Human Rights Law in New York. The amended regulations also send a strong message that discrimination based on one's gender identity or expression is unacceptable in New York.

Sincerely,

A handwritten signature in black ink that reads "M. Lettie Dickerson". The signature is fluid and cursive, with a long horizontal stroke at the end.

M. Lettie Dickerson
LGBTQ Rights Attorney