



April 8, 2016

Dear Career Center/Job Training Program Manager,

We are writing to you as the manager or administrator of a public, federally-funded career center that is part of the NCWorks network of North Carolina career centers. A bill recently passed by the North Carolina General Assembly, House Bill 2, purports to impose requirements on your career center that violate federal law and could subject your agency to federal lawsuits, investigations, and loss of federal funding. House Bill 2 is the subject of ongoing litigation, and the North Carolina Department of Justice has declined to defend it in court.

We share the following information so that your agency is fully informed when making important decisions about how best to treat job seeker with dignity and respect. Allowing transgender job seekers to access restrooms and other facilities consistent with their gender identity is not only in the best interest of career centers' workforce development mission, it is also required by federal law.

Discrimination against transgender job seekers is harmful and counter to the mission of workforce development and workplace safety

The U.S. Occupational Safety and Health Administration (OSHA) advises as follows:

Gender identity is an intrinsic part of each person's identity and everyday life. Accordingly, authorities on gender issues counsel that it is essential for employees to be able to work in a manner consistent with how they live the rest of their daily lives, based on their gender identity. Restricting employees to using only restrooms that are not consistent with their gender identity, or segregating them from other workers by requiring them to use gender-neutral or other specific restrooms, singles those employees out and may make them fear for their physical safety. Bathroom restrictions can result in employees avoiding using restrooms entirely while at work, which can lead to potentially serious physical injury or illness.ⁱ

Being forced to use facilities inconsistent with their innate identity may make it impossible for job seekers to use career centers and benefit from their services. Transgender job seekers are particularly in need of assistance because they face high levels of employment discrimination and are twice as likely to be unemployed.ⁱⁱ

We all care about privacy and safety in restrooms. Allowing transgender job seekers to use restrooms appropriate for their gender identity does not jeopardize, but rather protects, privacy and safety. North Carolina already has laws against sexual assault or invading others' privacy in restrooms. To the extent that any person feels uncomfortable using a restroom with another person, a career centers can make private facilities available upon request, so long as no one is forced into separate facilities.

Refusing to allow transgender job seekers to use facilities consistent with their gender identity violates federal anti-discrimination laws and risks litigation and loss of federal funds

House Bill 2 purports to require state and local government agencies to discriminate against transgender job seekers, as well as transgender staff. However, compliance with House Bill 2 creates serious legal and fiscal risks for state and local government agencies because it conflicts with several federal laws.

The Workforce Innovation and Opportunity Act (WIOA) prohibits sex discrimination in federally-funded career centers and other workforce development programs.ⁱⁱⁱ The US Department of Labor has published both a Training and Employment Guidance Letter and a proposed regulation interpreting WIOA to prohibit gender identity discrimination, and *specifically prohibiting WIOA funding recipients from “[d]enying individuals access to the bathrooms used by the gender with which they identify.”*^{iv}

Regarding your employees, Title VII of the Civil Rights Act of 1964 prohibits sex discrimination by state and local government employers.^v The U.S. Justice Department and Equal Opportunity Commission have recognized that Title VII prohibits gender identity discrimination and requires employers to provide equal access to workplace restrooms and changing facilities consistent with an employee’s gender identity.^{vi} Private employers have faced lawsuits for denying such restroom access to transgender employees, including by the EEOC,^{vii} and the Justice Department has also sued a state university for gender identity discrimination.^{viii} Federal courts have also held that discrimination against transgender individuals violates the Equal Protection Clause of the US Constitution.^{ix}

Thus, career centers in North Carolina that engage in discriminatory practices pursuant to House Bill 2 would violate federal law. While House Bill 2 includes no enforcement mechanisms, violations of WIOA or Title VII could result in federal litigation by job seekers, employees, or the U.S. EEOC or Justice Department, federal administrative investigations, and potential loss of federal funding.

We hope this letter is helpful in addressing some of the questions and concerns raised by House Bill 2. You may wish to consult other resources such as OSHA’s *Best Practices: A Guide to Restroom Access for Transgender Workers* for information about how to provide a safe and supportive environment for all job seekers and employees and ensure compliance with federal laws and regulations.^x If you have any questions, please feel free to contact Harper Jean Tobin at the National Center for Transgender Equality at hjtobin@transequality.org or (202) 745-2303.

Thank you for the work you do every day to help North Carolinians prepare for and find employment.

Sincerely,



Harper Jean Tobin
Director of Policy
National Center for Transgender Equality

ⁱ U.S. Occupational Safety & Health Admin., *A Guide to Restroom Access for Transgender Workers* (2015), <https://www.osha.gov/Publications/OSHA3795.pdf>.

ⁱⁱ Nat'l. LGBTQ Task Force & Nat'l Ctr. for Transgender Equality, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 55 (2011).

ⁱⁱⁱ 29 U.S.C. § 3248.

^{iv} Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act, 81 Fed. Reg. 4494, 4550 (proposed Jan. 26, 2016) (to be codified at 29 C.F.R. pt. 38); U.S. Dep't of Labor, Training and Employment Guidance Letter No. 37-14, Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System (May 29, 2015).

^v 42 U.S.C. § 2000e-2.

^{vi} Attorney General Memorandum, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (Dec. 15, 2014); *Lusardi v. McHugh*, E.E.O.C. App. No. 0120133395 (Apr. 1, 2015).

^{vii} *EEOC v. Deluxe Fin. Servs. Corp.*, No. 0:15-cv-02646-ADM-SER (D. Minn., filed June 4, 2015, settled Jan. 20, 2016).

^{viii} *United States v. Se. Okla. State Univ.*, No. civ-15-324-c, 2015 WL 4606079 (W.D. Okla. Jul. 10, 2015).

^{ix} *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011).

^x U.S. Occupational Safety & Health Admin., *supra* note i.