



HUMAN
RIGHTS
CAMPAIGN®

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General Counsel Taylor:

The Human Rights Campaign (“HRC”) is the nation’s largest civil rights organization working to achieve gay, lesbian, bisexual, and transgender equality. On behalf of its members, HRC respectfully submits the following comments in opposition to the Notice of Proposed Rulemaking published on July 11, 2008 and intending to amend Chapter 8 of Title 4 of the District of Columbia Municipal Regulations governing the “Gender Identity or Expression” provision of the D.C. Human Rights Act of 1977 (“the DCHRA”).

Introduction and Overview

The DCHRA is designed to ensure that “every individual... ha[s] an equal opportunity to participate in all aspects of life...” Toward this end, the DCHRA prohibits various forms of discrimination, including discrimination based upon actual or perceived gender identity or expression.

The Office of Human Rights and the Commission on Human Rights (“the Office and Commission”) has, pursuant to authority given it under the DCHRA, adopted rules and regulations regarding gender identity or expression. See Title 4, Chapter 8 of District of Columbia Municipal Regulations (“DCMR”). Chapter 8 aims “[t]o ensure that transgender people are treated in a manner that is consistent with their identity or expression, rather than according to their presumed or assigned sex or gender...”. Title 4, DCMR, Chapter 8, 800.1(d). The Office and Commission now seeks to repeal or modify some of those rules and regulations.

The Notice of Proposed Rulemaking (“NPRM”) published on July 11, 2008 should be rejected because it does not advance the goals and requirements of the DCHRA; in fact, it conflicts with and undermines the DCHRA by repealing common-sense regulations that help protect individuals against discrimination and adding new regulations that are simply unnecessary and discriminatory. See D.C. Official Code § 2-1403.01(c) (providing that the Office and Commission may adopt rules and procedures that “effectuate and are not in conflict with, the provisions of [the DCHRA].”)

Discussion of Objectionable Proposed Changes

1. Proposed subsections 801.3 and 801.4 should not be added as they conflict with the DCHRA and would create dangerous situations for transgender individuals

The NPRM seeks to amend section 801 by adding new subsections 801.3, which directly conflicts with both the DCHRA and existing rules and regulations, and 801.4, which contains vague language susceptible to overbroad application. These provisions have the potential of placing transgender people in District custody into demeaning and even physically dangerous situations. Neither proposed subsection 801.3 nor proposed subsection 801.4 should be added to the DCMR.

Proposed subsection 801.3 would provide that “[n]othing in this chapter shall require an agency of the District of Columbia government to classify, house, or provide access to gender-specific facilities to transgender individuals according to their gender identity or expression if the transgender individual is incarcerated, institutionalized, or otherwise within the District’s custody. A District agency may make reasonable inquiry to determine whether an individual in custody is transgender.”

This proposed subsection directly conflicts with § 2-1402.11 of the Code, which requires covered entities to refrain from discrimination based on gender identity or expression. The proposed subsection would create two different sets of rules—one for individuals whose gender identity and expression correspond with their assigned sex at birth, and another for individuals whose gender identity or expression do not correspond with their assigned sex at birth. The proposed amendment constitutes, quite simply, discrimination based on gender identity or expression, and creates the potential for extremely dangerous situations where, for example, an individual within the District’s custody who identifies or presents as female is housed with male individuals.

In addition, proposed subsection 801.3 directly conflicts with existing subsection 800.1(d), which provides that one purpose of the regulations is “[t]o ensure that transgender people are treated in a manner that is consistent with their identity or expression, rather than according to their presumed or assigned sex or gender.” Proposed subsection 801.3 and existing subsection 800.1(d) are simply irreconcilable: under the

proposed new subsection, District agencies would expressly *not* be required to treat transgender people in a manner consistent with their gender identity or expression.

Finally, proposed subsection 801.3 would conflict with existing subsection 805.3, which provides that “[r]equiring documentation or other proof of an individual’s gender is prohibited, except in situations where all persons are asked to provide documentation or other proof of their gender for a reasonable business or medical purpose.” Proposed subsection 801.3 does not require all persons to provide proof of their gender; rather, it opens the door for District agencies to selectively require proof only from persons who are perceived to be transgender. There is no compelling reason to treat transgender people in this selective manner.

For each of these reasons, proposed subsection 801.3 should not be added to the DCMR.

Proposed subsection 801.4 would provide that “[c]lassification and assignment for transgender individuals within District government custody shall be based on, among other things, the safety and security of the transgender individual, the needs of the facility, and the safety and security of the other individuals in the facility to which the transgender person is assigned.” As written, this language is vague and could be applied in what may be unintended and discriminatory ways—for example, a District agency, citing safety and security concerns, could refuse to classify or assign a transgender individual in a manner that corresponds to the individual’s gender identity or expression. Like 801.3, proposed subsection 801.4 should not be added to the DCMR.

2. Repealing the requirement of gender-neutral signage for single-occupancy rest-rooms would not effectuate the DCHRA and, in fact, directly conflicts with the DCHRA

Subsection 802.2 currently provides that “All entities covered under the DCHRA with single-occupancy restroom facilities shall use gender-neutral signage for those facilities (for example, by replacing signs that indicate “Men” and “Women” with signs that say “Restroom”.)” This common-sense rule helps effectuate the DCHRA by protecting people who are or are perceived as transgender from discrimination. The NPRM proposes to repeal this subsection, an action which conflicts with the DCHRA by making discrimination because of gender identity or perceived gender identity more likely. The NPRM provides no explanation as to why repeal is necessary or advisable.

Gender-neutral signage for single-occupancy restroom facilities is a simple, common-sense, and effective way to provide a safe facility for everyone while reducing discrimination and harassment based on gender identity or perceived gender identity.

While gender-neutral signage does not harm anyone and creates positive consequences by making clear that the restroom is a safe facility open to all, gender-specific signage can have serious negative consequences, particularly for individuals

perceived to be of a different gender than that which the restroom's signage indicates. For transgender individuals, finding a safe place to use the restroom can be an all too common concern. Transgender people frequently report experiencing harassment, discrimination, even violence when they attempt to use a restroom. Requiring gender-neutral signage for single-occupancy restrooms is an effective way to mitigate the risk of violence for transgender people and prevent discrimination based on actual or perceived gender identity or expression.

Gender-neutral signage on a single-occupancy restroom simply makes clear that the restroom is a safe facility available to anyone. Repealing the requirement of gender-neutral signage would have detrimental consequences for transgender people, people who may be perceived as transgender, and others who are more comfortable entering a gender-neutral restroom. There is simply no reason to repeal this common-sense provision, which helps to effectuate the goals of the DCHRA by ensuring that all individuals are treated equally and fairly, and helping to prevent discrimination, harassment, and violence based upon actual or perceived gender identity or expression. Subsection 802.2 should be left in place, as is.

2. Proposed Section 806.5 should not added as it is unrelated to the provisions barring discrimination based on gender identity in Chapter 8 of Title 4 of the DCMR

Proposed Section 806.5 would require that identification badges for District of Columbia government employees state the employee's legal name. This requirement would not apply solely to transgender District employees and it is not appropriate to include it in the regulations implementing the DCHRA. Many employees undergo legal name changes for a variety of reasons, yet the addition of this subsection would unnecessarily single out transgender employees. Furthermore, the addition of this subsection conflicts with the stated purpose of Chapter 8 of the DCMR, "[t]o ensure that transgender people are treated *in a manner that is consistent with their identity or expression*, rather than according to their presumed or assigned sex or gender..." (emphasis added).

The inclusion of Section 806.5 could require some transgender District employees to work with a name that comports neither with the photograph on the ID or the employee's workplace presentation. Transgender people already face significant difficulty in obtaining identification documents that reflect their gender presentations. This provision would unnecessarily add to those challenges in a transgender employee's own workplace, creating the potential for confusion and embarrassment, or even discrimination or violence.

The NPRM provides no explanation for the inclusion of this language in the DCMR at all, let alone in Chapter 8 of Title 4. There is no compelling reason to impose this identification requirement through regulation, especially with the clear intent, by including it in this section of the DCMR, to single out transgender workers.

Conclusion

The proposed changes are unnecessary and directly conflict with the DCHRA. The Human Rights Campaign strongly opposes the proposed changes for the reasons stated above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joe Solmonese". The signature is fluid and cursive, with the first name "Joe" being more prominent than the last name "Solmonese".

Joe Solmonese, President
Human Rights Campaign