NYS Human Rights Law
New Regulations Protecting Transgender & Gender-Nonconforming People

Statewide LGBTQ Domestic Violence Roundtable Meeting
APRIL 7, 2016

Presented by:
Milo Primeaux, Esq.  Noah Lewis, Esq.
Empire Justice Center  Transcend Legal
Agenda

- How We Got Here
  - Key Terms to Know
  - Painting a Picture: Transgender Discrimination in NYS
  - NYS Human Rights Law (HRL): SONDA vs. GENDA
  - Transgender Discrimination in the Disability Context

- Where We Are Now
  - Language of the New HRL Regulation
  - Regulation vs. Executive Order
  - Other State and Federal Protections

- Where Do We Go From Here
  - Using the HRL: Filing a Complaint & Available Remedies
  - Limitations of the HRL & Regulation

- Q&A
How We Got Here

* Key Terms to Know
  * Painting a Picture: Transgender Discrimination in NYS
  * NYS Human Rights Law (HRL): SONDA vs. GENDA
  * Transgender Discrimination in the Disability Context
Key Terms to Know

- **Sex assigned at birth**: Label of female/male/unspecified given at birth.
- **Gender identity**: A person’s deeply held internal sense of gender (i.e. being male, female, or somewhere else on the gender spectrum).
- **Gender expression**: Clothing, hairstyles, mannerisms, social interactions, etc. that society classifies as masculine or feminine.
- **Sexual orientation**: Describes an individual’s emotional, physical, and/or romantic attraction to other people.
Transgender:
Someone whose sex assigned at birth does not align with their gender identity.

Cisgender:
Someone whose sex assigned at birth and gender identity are the same—someone who is not transgender. (Cisgender people can be gender nonconforming/gender diverse.)
Injustice at Every Turn: Report on National Transgender Discrimination Survey (2011)

Published by Nat’l Center for Transgender Equality & Nat’l LGBTQ Task Force. Over 6,400 trans respondents nationwide; 531 in NYS

EMPLOYMENT

EDUCATION

HOUSING

HEALTH CARE

ACCOMMODATIONS & SERVICES

POLICE INTERACTIONS

ID DOCUMENTS

Injustice at Every Turn:
A Report of the National Transgender Discrimination Survey
NYS Human Rights Law (HRL)

- Currently protects against discrimination and harassment based on race, national origin, religion, sex, sexual orientation, disability in areas of:
  - Employment
  - Housing
  - Education (private only)
  - Access to credit
  - Public accommodations
NYS Human Rights Law (HRL)

- **Sexual Orientation Non-Discrimination Act (SONDA)**
  - Passed in 2002
    - Sen. Tom Duane introduced inclusive bill in 2000
    - Amendment to add trans protections defeated
  - Added SO to HRL (Hate Crimes Law passed in 2000)

- **Gender Expression Non-Discrimination Act (GENDA)**
  - Not passed by Senate for 8 years in a row
  - Left a gap in statutory language
HRL Case Law - Sex

- Dr. Renée Richards - denied entry to 1976 women’s U.S. Open
- Tried to impose a chromosome test
- Richards v. U.S. Tennis Ass’n, 93 Misc.2d 713 (NY Sup. Ct. 1977)
- Lost in the first round to the Wimbledon champion
HRL Case Law - Sex

- **Maffei v. Kolaeton Indus.**, 164 Misc 2d 547 (Sup. Ct. NY Cty. 1995) (“Being a transsexual male he may be considered part of a subgroup of men. There is no reason to permit discrimination against that subgroup under the broad antidiscrimination law of our City.”)

- **Buffong v. Castle on Hudson**, No. 05-CV-11634, 2005 WL 4658320, at *2 (N.Y. Sup. Ct. 2005) (“[A] transgender[] person states a claim pursuant to New York State’s Human Rights Law on the ground that the word ‘sex’ in the statute covers transsexuals.”)

- **Hispanic Aids Forum v. Estate of Bruno**, 839 N.Y.S.2d 691, 696 (Sup. Ct. 2007) (rejecting defendants’ argument that neither the New York City of State Human Rights Laws protects transgender persons)

- **Doe v. City of New York**, 976 N.Y.S.2d 360, 363-64 (Sup. Ct. 2013) (denying City’s motion to dismiss plaintiff’s claim that she was denied access to benefits by HASA in violation of New York City and New York State Human Rights Laws (gender and disability) when it refused to change the name and gender marker on her benefits card and intentionally referred to her by former name and male pronouns)
Mariah Lopez


“Doe’s disorder has been clinically diagnosed ... using the medically accepted standards set forth in the DSM-IV. No more is required for Doe to be protected from discrimination under the State Human Rights Law.”

Must provide a reasonable accommodation
HRL Case Law - Disability

- Sabrina Wilson – housing discrimination
HRL Case Law - Disability

- Why Disability?
  - Isn’t this offensive and a step backwards?
- Why not?
Where We Are Now

* Language of the New HRL Regulation
* Regulation vs. Executive Order
* Other State and Federal Protections
NYS HRL Trans Regulation

- Explicitly interprets the HRL’s definitions as follows:
  - “Sex” includes gender identity, gender expression, and transgender status
  - “Disability” includes “gender dysphoria or other condition meeting the definition of disability in the Human Rights Law”

- Significance
Regulation vs. Executive Order

- An **executive order** is a very specific tool an executive leader (e.g., governor) may use to make unilateral policy decisions, often without input or approval from the legislature or the general public
  - Usually time-limited (expiration dates)
  - Can be negated by next executive in office

- By contrast, **this regulation was promulgated as part of a formal rulemaking process through the executive branch** (i.e., the NYS Division of Human Rights), and was subject to public comment before being finalized
  - Stronger than an executive order
Other Policies & Protections

- **Federal**
  - Title VII (sex discrimination in employment)
  - Americans with Disabilities Act
  - Executive Order 11246
  - Title IX (sex discrimination in education)
  - HUD Regulations
  - Affordable Care Act § 1557 (Nondiscrimination provision)

- **New York State**
  - NYC Human Rights Guidelines
  - NYSED Education Guidelines (including public schools)
  - Policies re: Identity Documents
Other Policies & Protections: Survivors of Intimate Partner Violence

- Services providing intervention and assistance, such as DV programs, are public accommodations and/or housing providers and subject to these regs, as well as other anti-discrimination mandates
  - 15 OCFS ADM 23
  - Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4 (VAWA)
  - Federal Register, FR Doc No: 2013-08711, Volume 78, Number 75, Pages 23263-23271 (FVPSA)
Other Policies & Protections
Survivors of Intimate Partner Violence

- Transgender and Gender-Nonconforming DV survivors may have additional anti-discrimination protections based upon their DV-related status:
  - Insurance (Ins Law 2612, 3321, 4305)
  - Housing (RPL 227-d; RPAPL 744)
  - Employment (Exec Law 296, 292; NYC Code 8-107)
Where Do We Go From Here

* Using the HRL: Filing a Complaint & Available Remedies
* Limitations of the HRL & Regulation
Using the HRL Regulations

- Two options
  - Go directly to court
    - (Must stop at EEOC)
  - File a complaint with the Division of Human Rights
Using the HRL Regulations

- Civil action
  - 3 year statute of limitations
  - Remedies
    - No punitive damages (except housing discrimination)
    - Reinstatement, back pay, front pay and compensatory damages
    - Injunctive relief ("other remedies as may be appropriate")
    - Civil fines & penalties
  - Can file a complaint & then ask to have it dismissed
Using the HRL Regulations

- **Complaint**
  - 1-year statute of limitations to file with the Division
  - Can ask to dual file with EEOC or HUD

- **Advantages over court**
  - Free discovery
  - Quicker
  - Give agency a chance to apply the regulations
Using the HRL Regulations

- Complaint process
  - File with a regional office
  - Division will investigate the complaint (180 days)
  - Conciliation
  - Probable Cause determination
    - If no, dismissed, can file in court
    - If yes, public hearing

- Public Hearing
Using the HRL Regulations

- Available remedies for complaints
  - Cease and desist order
  - Take affirmative action (e.g., hiring, reinstatement, back pay, access to facilities and programs)
  - Compensatory damages
  - Punitive damages (housing discrimination only)
  - Civil fines and penalties up to $50,000 paid to the state ($100K if willful)
  - Report on compliance going forward
Limitations of HRL & Regs

- Four or more employees
  - Exceptions – when employer size is not an issue:
    - If sexual harassment is at issue
    - Domestic workers are complainants (also protected from sexual harassment and harassment based on gender, race, religion or national origin)
    - Interns are complainants
Limitations of HRL & Regs

- Attorneys’ fees are limited to:
  - All housing and housing-related credit discrimination
  - Employment or credit discrimination cases based on sex
    - This would include trans people.

- NO attorneys’ fees for:
  - Employment disability discrimination
  - Public accommodation
Limitations of HRL & Regs

- General limitations of nondiscrimination law
  - Difficult to prove hiring discrimination
  - Harassment becomes less overt
Questions?

Milo Primeaux, Esq.
Staff Attorney, LGBT Rights Project
(585) 295-5721
mprimeaux@empirejustice.org
www.empirejustice.org

Noah Lewis, Esq.
Transcend Legal
(347) 612-4312
nlewis@transcendlegal.org
www.transcendlegal.org