



ARLINGTON COUNTY HUMAN RIGHTS COMMISSION

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September 13, 2016

Libby Garvey
Chair
Arlington County Board

Commission Members


Kitty Clark Stevenson
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Roland Watkins
Vice Chair
Juan Carlos Velazquez,
Commissioner
Tiffany Joslyn,
Commissioner
James Tsai,
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Commissioner
Yasmine Parinaz-Taeb,
Commissioner
Robert Huekler,
Commissioner
Mao Lin, Commissioner
Bessy Blanco,
Commissioner

Dear Ms. Garvey:

Enclosed please find a copy of the Human Rights Commission's report on an educational meeting held on May 12, 2016, with members of the transgender community. The transgender members who participated raised issues that affected transgender or transitioning individuals in our community. This meeting allowed the members of the Commission to gain information, which led to better understanding of the issues, concerns and needs of the transgender community.

The report contains facts and recommendations made by the transgender members who participated. The Commission is not making specific recommendations at this time. Among the salient aspects of the report is the fact that the County does not provide transitioning health care benefits like sexual reassignment surgery and related pre and post-operative hormone treatments. (A copy of the response from the County's HR Director is attached.) If the Board wishes this or any other aspect of the report to be studied further by the Commission, please let us know.

Sincerely,


Kitty Clark Stevenson
Chair

Arlington Human Rights Commission (AHRC)

Attachments

Cc: Katie Cristol, Board Liaison, (AHRC)

HUMAN RIGHTS COMMISSION REPORT
Transgender Community Issues
September 8, 2016

The Arlington Human Rights Commission met with representatives of the transgender community on May 12, 2016, to discuss issues of civil rights of interest to this segment of the community. In attendance were Chair, Kitty Clark Stevenson, Vice Chair, Roland Watkins, commissioners Tsai, Connolly, Pinnock Fitts, Huekler, Lin, Blanco, and Velázquez. Staff present were Raul Torres, Antonio Acevedo, and Sandra Perez. Also in attendance, Board Liaison, Katie Cristol. Two members of the general public attended the meeting. Commissioner James Tsai introduced the speakers who were Gabriela Garcia, Nova Salud, Inc.; Arli Christian, TransLaw, and Roxanne Edwards, Transgender Education Association of Greater Washington.

The three guest speakers made presentations on different issues of concern to the transgender community and shared their experiences with the commission. Their presentations were followed up by questions.

NOVA SALUD

The first presenter was Gabriela Garcia from Nova Salud Inc. She administers the DISTINTA program. DISTINTA is an adaptation of the TISITA program, (Transgender Sisters Informing Sisters about Topics on AIDS) which is a program originally designed for women of color. The goal of the program is to educate on aspects of sexually transmitted diseases, primarily HIV and its consequences to this high-risk sector of the population. In the three years of existence of the program, it has been able to reach about one hundred transgender women. According to Ms. Garcia, these women move from one place to another around the state and are difficult to reach and track. The program reaches out to them mainly at night clubs, discotheques, and through social networks. The purpose is to provide them with educational and referral services and to facilitate access to health care.

The organization provides services to Arlington, Alexandria and Fairfax residents. Arlington has a high population of transgender persons. The Latina transgender community has the same needs as the rest of the community; they seek stable employment, lawful immigration status, health care, and housing, etc. Their cases get more complicated because they experience discrimination for being

transgender persons. The transitioning transgender individuals are more often rejected and don't have easy access to primary health care, jobs, and housing because of their appearance. Some of them are viewed as "extraterrestrials" or from another planet.

The Latina transgender community member often goes to the black market to access hormones and medications needed to complete the process of changing their gender. Employers are not extending the necessary medical services required during the transition process.

People think that transgender persons are non-believers or have no faith. As Latinas with strong family traditions, many of them believe in God and worship accordingly. Also, they have families. For example, Ms. Garcia is married and has been in a heterosexual relationship with her husband for fifteen (15) years. In response to a question, Ms. Garcia stated that the state of Virginia had been unfriendly and unwelcoming to the Latina transgender community.

TransLAW

Arli Christian, an attorney who currently serves on the Steering Committee of Trans Legal Advocates of Washington DC (TransLAW), addressed the current legal landscape for transgender communities in the Nation, and the Washington D.C. Metropolitan Area. She stated that the Civil Rights Act protects gender identity discrimination as sex discrimination. Transgender people's issues have been considered sex discrimination and have been extended legal protections by the federal government, by opinions of the Attorney General, and DOJ enforcement. The EEOC has extended that same protection in employment, and HUD in housing. The current legal landscape for transgender people's rights/protections under civil right laws is that it exists in the workplace, housing and places of public accommodations. The Virginia Human Rights Act covers sex discrimination. Therefore, transgender people's protection exists in Virginia. Nationwide, there are 200 municipalities and 18 states that have laws that specifically protect the rights of transgender individuals to use bathrooms according to their gender identity. The state of Virginia and Arlington County do not have such specific protections. Notwithstanding, there are only two jurisdictions in Virginia that protect sexual orientation, Arlington County and the City of Alexandria.

At the federal level, transgender individual's workplace protections are covered under sex discrimination. The EEOC and the Attorney General have established

that sex discrimination includes gender identity discrimination (Macy v Holder, E.E.O.C. Apr. 20, 2012)

The protection under the law includes the right to use the appropriate gender identity restroom. (OSHA guidance, established by EEOC in the Lusardi case, E.E.O.C. Apr. 1, 2015)

In housing, HUD has issued guidance that gender identity discrimination in federally-supported housing is unlawful.

What are other jurisdictions doing?

- There are 200 municipalities and 18 states that have laws that protect the rights of transgender people to use the appropriate bathroom.
- 200 municipalities cover gender identity in their legislation and ordinances.
- DC has a regulation that is very comprehensive of gender identity protections.
- NY just passed an explicit protective regulation.
- Many municipalities have passed ordinances that say any single stall restroom must be gender neutral.

What can you do?

- Include the protection in your ordinance. The more explicit, the better.
- Include what it means not to discriminate on the basis of gender identity
- Employment: usual protections of failure to hire, promote, disparate treatment and unlawful termination.
- Also spelling out what certain things mean.
- People are losing their jobs during transitioning, so what is it and how does it look like to discriminate against a person under sex discrimination as a transgender should be clarified in your code.

What not to do:

- Unlawful transfer (Example: A person working as a male in the front of the store. Then he starts transitioning and is put in the back room of the store stocking instead of on the sales floor because of her appearance during transition)
- Hostile environment or harassment (calling by the wrong name or pronoun, disclosing private medical information such as transgender person's status or

related medical treatment) to keep calling a transitioning person Mr., he or Mike, is not acceptable, that is harassment.

- Refusing the use of appropriate bathroom or forcing to use the separate bathroom (not requiring ID or any proof of gender to do so) this is construed as illegal sex discrimination.
- Right to comply with dress code according to gender identity (if gendered dress code is for a legitimate purpose)
- Not updating email address/directory/business cards with a proper name.

State Issues:

North Carolina requires people to use the bathroom that corresponds with sex on the birth certificate. There have been public outcry, businesses boycotting the state, etc. DOJ is suing the state with federal agencies threatening to withhold funds.

Oxford Alabama – passed an ordinance that made it a crime to use a restroom that matches gender identity. The bill was recalled one week later.

Rockwall Texas considered the same thing and had the biggest protest they have seen over considering the ordinance (maybe 50 people in a small town protested)

Ms. Christian believes that these regulations are impossible to enforce and ultimately unnecessary. "Those protections have not weakened public safety or criminal laws, nor have they compromised their enforcement."

Things your Commission or County Board can do:

- Strengthen the code protections based on gender identity (not their authority) have the County Board amend the ordinance.
- Maybe develop internal rules of the commission on how sex discrimination is going to cover gender identity discrimination issues and complaints.
- Facilitate the appointment of a transgender commissioner.
- Build a campaign around gender identity complaints.
- Track gender identity complaints.
- Extend health benefits to transgenders.
- Commission a study on gender identity discrimination in employment, housing, places of public accommodation, etc.

There are different views on how to protect transgender people's rights, and protecting everyone's rights doesn't mean giving special privileges to certain people. Ms. Christian stated that there is this confusion that transgender people want to have special privileges. It is not about conferring special privileges to transgender persons. Transgender community members only seek equal treatment. Every person needs to use a restroom. Biological gender specific facilities exclude transgender persons. Compare this to marriage – where people argued that gay people were seeking a special privilege while gay people argued that they should be allowed to the same treatment as heterosexuals. It is about equality, not about a privilege.

Transgender individuals have the right to use their preferred name, everyone's right to be called what they want. Everyone is entitled to receive medically necessary health care treatment.

Commissioners inquired as to what guidance they should follow regarding this issue. The Executive Director clarified that the US Supreme Court has not ruled on the EEOC's interpretation that transgender person's issues are covered as sex discrimination under Title VII. Notwithstanding, the Human Rights Commission follows EEOC guidelines. Vice Chair, Watkins brought up the most recent opinion of the Virginia Attorney General that interpreted that the Virginia Human Rights Act covers gender identity and sexual orientation under its sex discrimination provisions.

To the question as to when an employer should allow a transgender person to use the bathroom of its gender identity, Ms. Christian responded that it should happen when the individual is ready to go to the bathroom that matches his/her gender identity. The Commission Chair further clarified that the term is the "expression" and desire to use it permanently because some transgender persons may never be able to have the sex realignment surgery because they may not be able to tolerate it.

In the employment arena, a transgender person who changes his/her name may have to reveal his/her old names for employment verification purposes to have their work history verified.

Transgender Education Association of Greater Washington

Roxanne Edwards is Vice President of the Transgender Education Association of Greater Washington (TGEA), and an Architect by profession who has designed many notable buildings in the Greater Washington Area including the design of the

County's Building Lobby. The TGEA organization serves the need of all people in the transgender community.

She said everybody had a gender. Ms. Edwards established that transsexual individuals were isolated and experience the fears of rejection by friends, family and employers. She raised the question of why the government wants to classify people by gender. Why does the government need to know that? That fact, used for medical plan statistical purposes, impact a very personal aspect of the transgender person's life and their access to medical plans.

There is no universality in who transgender persons are. There is uniqueness as individuals and as a group in the transgender community. Transgender individuals are just like the rest of society, poor, rich, and come from every demographic group. Discrimination makes transgender people suffer unnecessarily. Children are separated from parents, divorce proceedings are horrible, and people lose their jobs once they transition. Once a transgender person is in transitioning process getting a job is the most difficult thing to do. Most are church-goers, family members, parents, and grandparents. Most of the issues of the LBG's are also the issues of the transgender community. Gender expression is what gives all of them the discriminatory response.

Ms. Edwards stated that the State of California was extending medical benefits to transgender individuals to transition. People think that the state is crazy because what a transgender person needs is psychiatric treatment not medical services to transition. It's an issue of lack of education and information. It doesn't cost any much more to extend the medical benefits for transitioning to a transgender employee. Attorney Aril Christian emphasized that under the federal law, you can't discriminate if the medical plan is covered under the Affordable Care Act. She quoted Section 1557 of the Affordable Care Act and the corresponding regulations issued by the federal Department of Health and Human Services.



HUMAN RESOURCES DEPARTMENT

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June 15, 2016

Ms. Kitty Clark Stevenson
Chair
Arlington County Human Rights Commission

Dear Ms. Stevenson:

Thank you for your inquiry regarding County health coverage and limitations for transgender employees. As background, the County currently offers four health plans to our active employees; one with Kaiser Permanente and three with Cigna. Our Kaiser plan is fully-insured, whereas our Cigna plans are self-insured, meaning that the County pays Cigna a per-head fee to administer the plan for us but the County pays the actual claims expenses. There is no difference in coverage for full-time and part-time employees, except that part-timers assume a greater portion of the premium cost.

All of our plans are in compliance with current federal and state regulations. At present, our health plans exclude coverage for gender reassignment surgery, including hormonal therapy in preparation for or subsequent to any such surgery. My staff regularly works with employees to navigate the increasingly complex health care system. Often behavioral health and medical services related to gender dysphoria and transition are covered but this is determined by diagnostic codes entered at the provider level.

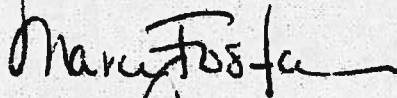
As an organization, our goal is to provide affordable, high quality health coverage to our employees, retirees, and their eligible family members. As a result, our health plans do not cover all services. For example, our plans do not provide coverage for applied behavioral therapy for children with autism, in vitro fertilization, hearing aids, or treatments considered experimental. Other coverage areas require pre-authorization, have limitations based on medical necessity, or require services be provided at approved facilities.

Each year we review our coverage and evaluate the costs and benefits of any potential changes. The cost of any coverage changes impacts the premiums we charge all of our employees and retirees, not just those availing themselves of the additional services. As you might imagine healthcare costs have increased significantly over the last several years so adding coverage has not been something that the County has taken lightly. We are about to begin a two to three year comprehensive review of our employee benefit programs, with the assistance of a consultant, and health plan coverage changes will certainly be a part of that discussion.

We are aware of the recent legal opinions on this topic, as well the recently issued federal regulations regarding "Nondiscrimination in Health Programs and Activities" under the Affordable Care Act (45 CFR Part 92). The regulations are complex and wide-ranging and we are in the early stages of analyzing the requirements of these regulations and discussing their impact with both Kaiser and Cigna. According to the regulations, any health plan design changes must take effect on the first day of the first plan year beginning on or after January 1, 2017 – which in our case would be the plan year beginning July 1, 2017.

Should Ms. Cristol or Commission members have any additional questions or require more detailed information, I am happy to provide it.

Sincerely,

A handwritten signature in black ink that reads "Marcy Foster". The signature is written in a cursive style with a long horizontal stroke at the end.

Marcy Foster
Director

cc: Mark Schwartz, County Manager
