

I. "What's in a Name" -- Name - Gender Designation Issues in Michigan and Federal Law.

A. Changing Name/ Gender Designation under Michigan Law.

1. Filing a Petition to Change Name with the Circuit Court
  - a) Costs - \$150.
  - b) See attached forms and the State Court Administrative Office website:  
<http://courts.michigan.gov/scao/courtforms/namechange/ncindex.htm>
2. Entry of "Order Following Hearing on Petition to Change Name." (\$10.)
  - a) See attached form.
3. Changing Birth Certificates.
  - a) Order to Change Name can include provision to change the original birth certificate. At the time of hearing should present some evidence of some sex reassignment surgery.
  - b) If later then (see MCL 333.2831(c) Department of Community Health, Office of Vital Records – official website contains following requirements:
    - (1) Completed change Application
    - (2) Physician's Medical Affidavit Supplied by the State Registrar's office --Must be notarized, attesting all necessary reassignment surgeries have been completed.
4. Driver License Issues – Gender Designation Changes.
  - a) Need to have the Change of Name Order presented
  - b) Notwithstanding the official campaigns stance of the Secretary of State (which seemed to suggest that the S of S would only change a gender designation in a birth certificate basic requirement is have evidence of some surgery and permanently living in desired gender.

B. Name/ Change in Federal Documents.

1. Social Security.

- a) Name Change – Need Order of the Court.
- b) Gender Designation Change.

[http://ssa-custhelp.ssa.gov/app/answers/detail/a\\_id/1667/kw/gender](http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/1667/kw/gender)

- (1) Gender (such as your birth certificate, or a letter from your surgeon or attending physician stating that the surgeon/physician has completed your sexual reassignment surgery and that you have transitioned to the new gender. All documents must contain enough biographical data, e.g., name, date of birth, to clearly identify the you).

## 2. Passport

- a) Name Change – Need Order of the Court.
- b) Gender Designation Change: [http://travel.state.gov/passport/get/first/first\\_5100.html](http://travel.state.gov/passport/get/first/first_5100.html)
  - (1) If transition is in process – The physician certifies that your transition is in process, you are eligible for a limited validity two-year passport.
    - (a) Doctor certifies that his or her patient “has had appropriate clinical treatment for gender transition to the new gender (specify new gender male or female)” or “is in the process of gender transition to the new gender (specify new gender male or female).”
  - (2) If transition is complete – If a physician certifies that your transition is complete, you are eligible for a full validity ten-year passport. –
    - (a) letter need not certify that SRS is complete – just that the doctor states that you “have had appropriate clinical treatment for gender transition to the new gender (male or female).”

## II. "Taking Care of Business" -- Transgender Employment Issues.

- A. Unfortunately, anti-LGBT discrimination runs rampant, particularly without federal law to protect LGBT workers. According to a Williams' Institute study, up to 70% of transgender individuals reported workplace discrimination. Even worse, these numbers are likely underestimated. To avoid encountering discrimination, LGBT people sometimes stay closeted at work or self-select more LGBT-friendly careers. According to the Transgender Law Center, a mere 15% of those reporting discrimination or harassment had filed a complaint.
- B. Michigan Law.
  1. State law – No express protection for gender identification or expression.
  2. Local Ordinances – Municipality may be shielded from liability due to state governmental immunity laws.
  3. Governor Granholm's Executive Order – In November 2007, Governor Granholm, signed an executive order banning employment discrimination based on gender identity or expression. The order directed the Civil Service Commission to adopt rules to address discrimination issues around gender identity or expression, and would in theory support filing a grievance
    - a) CSC Rule 1-8.1 Prohibited Discrimination does not list gender identification – so it's unclear whether the executive order was in fact implemented.
    - b) Unclear whether present Governor will continue this order.
- C. Federal Law.
  1. No express prohibition against discriminating on the basis of gender identity or expression. ENDA was not passed.

2. Title VII - which prohibits discrimination on the basis of sex – has been construed to extend to instances of discrimination on the basis of gender stereotypes.
  - a) The Supreme Court in *Price Waterhouse v Hopkins*, 490 US 228 (1989) first established that Title VII's reference to sex encompasses discrimination based on a failure to conform to stereotypical gender norms.
  - b) In *Smith v Salem*, 378 F3d 566 (CA 6, 2004), the US Court of Appeals for the 6th Circuit neatly summarizes the perspective of how sex stereotyping discrimination could protect a transitioning male to female transsexual: "After *Price Waterhouse*, an employer who discriminates against women because, for instance, they do not wear dresses or makeup, is engaging in sex discrimination because the discrimination would not occur but for the victim's sex. It follows that employers who discriminate against men because they do wear dresses and makeup, or otherwise act femininely, are also engaging in sex discrimination, because the discrimination would not occur but for the victim's sex."
  - c) "Sex stereotyping based on a person's gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as 'transsexual,' is not fatal to a sex discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity." *Smith*, 378 F.3d at 575.
3. Elements of Proof:
  - a) "Ultimate question ... is whether the [defendant] demoted [or failed to hire or disciplined] or discriminated against ... [the defendant] because of his failure to conform to sex stereotypes ..." *Barnes v City of Cincinnati*, 401 F3d 729, 737 (CA 6, 2005)
  - b) If a defendant articulates a legitimate, non-discriminatory reason for the adverse employment action at issue, the plaintiff then must show that the defendant's proffered explanation is merely a pretext for discrimination." *Myers v. Cuyahoga County*, 182 Fed. Appx. 510 (2006).
    - (1) In *Myers*, the plaintiff relied on a witness's statement that Myers's transsexualism was a topic of office gossip and that he once overheard a private conversation between Caraballo and Vazquez in either 1996 or 1997 in which Vazquez referred to Myers as a "he/she." Yet that remark was remote in time from Myers's termination -- the remark was made sometime in 1996 or 1997, several years before the problems with Myers's performance in late 1998 and 1999 that led to her disciplinary offenses and ultimately her termination -- and there is no evidence that the remark was related to Cuyahoga County's decision to terminate her. This resulted in the Court rejecting the claim.
4. Technical Requirements:

Plaintiff must file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) within one hundred and eighty days after the alleged unlawful employment practice occurred. 42 USCS § 2000e-5(e)(2); Once the Commission issues right to sue letter, plaintiff has 90 days to commence suit. 42 USCS § 2000e-5(f)(1).