

Out in the Mountains
Established in 1986

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Out in the Mountains (ISSN 1081-5562) is published monthly by Mountain Pride Media, Inc. The newspaper maintains offices at 109 South Winooski Avenue in Burlington, Vermont. Our mailing address is PO Box 177, Burlington VT 05402-0177. Our e-mail address is oitm@together.net. Bulk rate postage for the mailing of the newspaper is paid in Burlington, Vermont. The subscription rate is \$20 per year within the United States.

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Statement of Purpose

The purpose of Out in the Mountains is to serve as a voice for lesbians, gay men, bisexuals, transgendered people, and our supporters in Vermont. We wish the newspaper to be a source of information, insight, and affirmation. We also see OITM as a vehicle for the celebration of the goodness and diversity of the lesbian, gay, bisexual, and trans-gendered communities here in Vermont and elsewhere.

Editorial Policy

We will consider for publication any material which broadens our understanding of our lifestyles and of each other. Views and opinions appearing in the paper do not necessarily represent those of the staff. This paper cannot and will not endorse any candidates or actions of public officials on issues of importance to lesbians, gay men, bisexuals, and transgendered persons.

We reserve the right not to publish any material deemed to be overtly racist, sexist, anti-Semitic, ageist, classist, xenophobic or homophobic.

Writers' guidelines are available on request. All materials submitted must include a name and contact number. However, within the pages of the newspaper, articles may appear anonymously upon request, and strict confidentiality will be observed.

Articles, letters, and artwork should be sent to us by the 15th of the month prior to the month of publication (i.e. February 15th for the March issue). We encourage and implore our readers to do what they can to make OITM a paper which truly represents the many voices of our communities.

Materials should be sent to:
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Legal Briefs:

THE LOW-DOWN ON TRANS CIVIL RIGHTS IN EMPLOYMENT

Do laws prohibiting workplace discrimination on the basis of sexual orientation protect transgendered people?

No. Courts have uniformly rejected the claim that laws protecting gays, lesbians and bisexuals implicitly protect transgendered, and specifically transsexual people. Courts have explained that the term sexual orientation deals with sexual preferences and practices. Transgenderism, and particularly transsexualism, in contrast, relate to sexual identity.

In fact, one of the most difficult and divisive issues within the gbltq community in recent years has been whether to push to amend the proposed Employment Non-Discrimination Act (ENDA) to prohibit not just workplace discrimination on the basis of sexual orientation, but also workplace discrimination against transgendered persons under federal law.

One exception to the uniform exclusion of transgendered people from the legal protections afforded gay, lesbian and bisexual people appears to be Minnesota's non-discrimination law, which expressly defines sexual orientation to include having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness.

Are transgendered people protected against job discrimination by any other laws?

The Minnesota law, and a number of local ordinances around the country, are among the very few laws expressly prohibiting discrimination against transgendered people.

Through the years employees who have been mistreated—mostly transsexuals—have sued their employers arguing that they have been discriminated against on the basis of sex. Because sex discrimination is illegal, they have argued, they cannot be fired or harassed simply because their sex is neither strictly male nor strictly female.

This argument makes a lot of sense, and un masks the little-recognized reality that sex is a complicated characteristic. Although most people fit neatly into one of two categories—male or female, there are thousands of Americans who fall somewhere along a continuous spectrum of sex or gender, including not only transgendered persons, but the many folks who are born with ambiguous chromosomal, anatomic or other physical characteristics. To discriminate against someone who lies along the gender spectrum because they do not fit tightly into either the male or female category is sex discrimination every bit as much as to deny someone a job

because he or she is a male or female.

Unfortunately, the vast majority of courts have rejected this argument. (A couple of lower courts got it, but were reversed on appeal.) The courts generally conclude that the adverse job action against transsexuals flows not from their sex but, rather, from the fact that they are undergoing a transformation from one sex to another, their failure to comply with the company dress code (this one sometimes arises when a preoperative male-to-female transsexual in transition wears dresses to work), or their misrepresentation of their sex on an employment application.

The one exception to this clear trend that we have found was a 1995 lower court decision in New York. That court concluded that New York City's antidiscrimination ordinance prohibited workplace harassment against transsexuals. The court relied heavily on the fact that the ordinance prohibited discrimination and harassment on the basis of gender, rather than sex. Consistent with this idea, many civil rights advocates around the country have pushed for the use of the term gender in local nondiscrimination laws rather than sex.

We should note that some transsexuals have argued that transsexualism is a disability, and cannot therefore be the basis for firing or refusing to hire someone. The Americans with Disabilities Act specifically states that it does not protect transsexuals and transvestites, but many state laws prohibiting discrimination on the basis of disability don't contain such language. Again, most courts have rejected the claim that existing laws prohibiting disability discrimination apply to transsexuals, although a hearing officer at the Florida Human Relations Commission has embraced this few.

In sum, with a few isolated exceptions, transsexuals, and transgendered people in general, are not protected against job discrimination by existing laws.

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont whose practices include employment issues, family matters, estate planning, personal injury and worker's compensation cases, and general commercial and civil litigation. This column features timely information about legal issues of interest to our community. We hope to provide information about important laws and court cases that may affect our rights, as well as practical nuts and bolts advice for protecting ourselves and our families. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356.

"As a newcomer to Vermont, Out In the Mountains has been an invaluable resource to me. Reading the paper is helping me to build a sense of connection to the G/L/B/T community in Vermont. Writing a monthly article for OITM called, "Faith Matters" is giving me a unique way to address practical issues from a spiritual perspective, something I believe means a great deal to many of us. Last but not least, I simply could not have launched Triangle Ministries without this unique advertising medium and am exceedingly grateful to all who make this newspaper happen." -- Christine Leslie

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