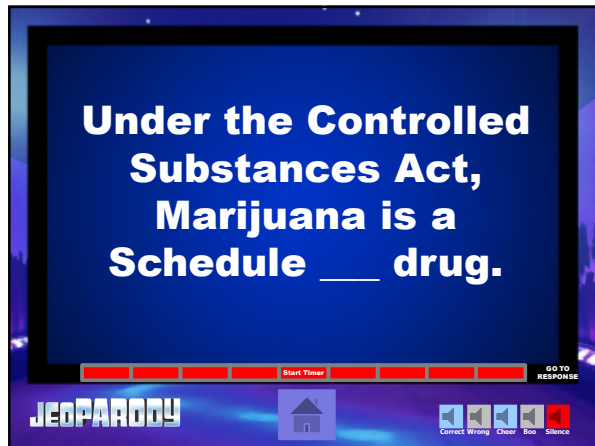
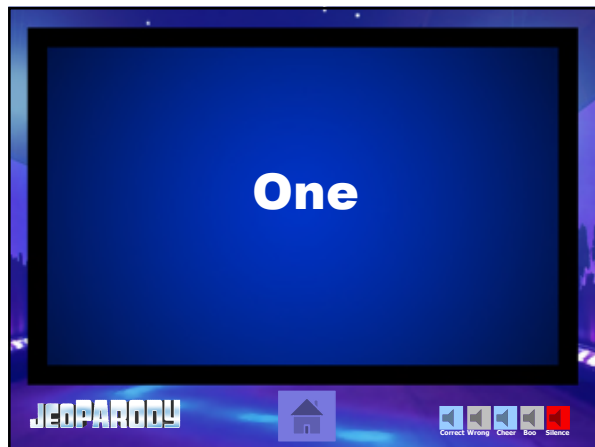


Fisher Phillips **Status of the Law – the States:**

- Legal Recreational Marijuana – 8 + the District of Columbia
- Legal Medicinal Marijuana – 29 states
- 65 million Americans live in states allowing some form of marijuana use
- \$6.7 billion dollar industry, with \$21.8 billion projected by 2020
- 758,607 medical marijuana patients are registered in CA, but registration is voluntary so this is a low-end estimate

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Status of the Law-Federal

Still a Schedule I drug under the federal Controlled Substances Act, which means according to the Feds:

- (1) high potential for abuse,
- (2) no currently accepted medical use in treatment in the US, and
- (3) lack of accepted safety for use of it.





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Status of the Law – Federal

- August 2013 – DOJ issues the Cole Memo - “US Attorneys, don’t go out of your way to prosecute marijuana cases”
- Instead, focus their efforts on several priorities, including:
 - Prevent distribution of marijuana to minors;
 - Prevent marijuana revenue from funding criminal enterprises, gangs or cartels;
 - Prevent marijuana from moving out of states where it is legal.






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Status of the Law - Federal

- August 2016 – DEA refuses to de-schedule marijuana from Class 1 to Class 2 or Class 3, but broader research is allowed.
 - Class 1 - Heroin
 - Class 2 - Cocaine











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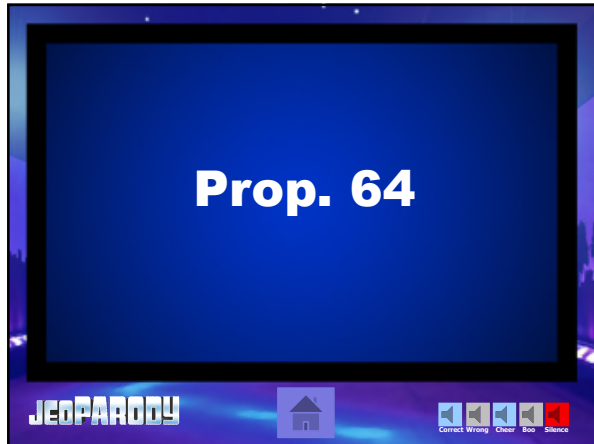
This Proposition allows California adults age 21 or older to smoke or ingest marijuana for recreational use.

Start Timer

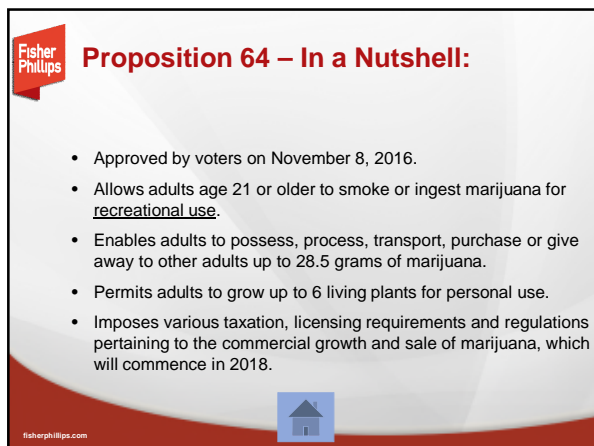
GO TO RESPONSE
















Proposition 64 – In a Nutshell:

- Cities and counties can completely ban personal medical marijuana cultivation activities in outdoor areas.
- Cities and counties are precluded from completely prohibiting cultivation inside a private residence.
- City of El Monte Example
 - Prohibited outdoor personal adult non-medical marijuana cultivation; and
 - Established regulations and a permitting process for indoor personal non-medical cultivation.








Prop 64 – Proposed Regulations

Originally, two separate sets of regulations were affected by Prop 64:

- Medicinal Cannabis regulations were to be revised
- Recreational Cannabis regulations were going to be introduced by the end of 2017



In late June, the Governor signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act, which creates one regulatory system for both medicinal and adult-use cannabis.

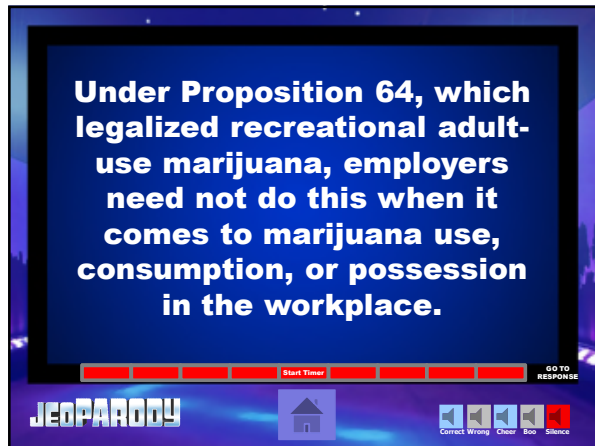


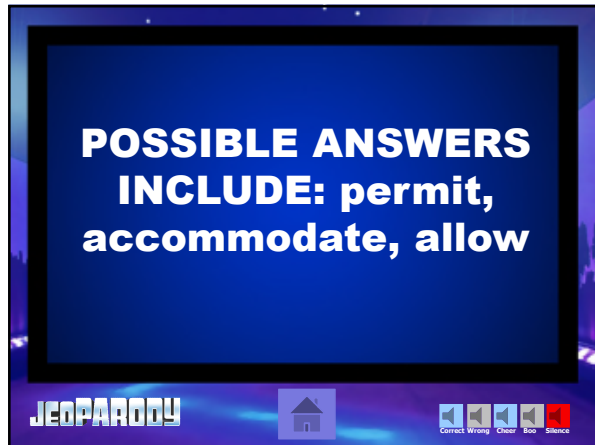


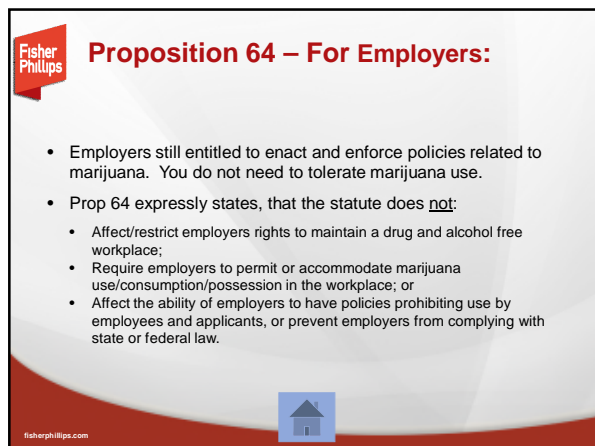
Prop 64 – Proposed Regulations


While the medical marijuana regulations had been drafted and received public comment, on August 2, 2017, state officials announced that they must go back to the drawing board now that recreational and medical cannabis are being regulated together, crafting new rules under an “emergency rulemaking process” to ensure the state meets Prop 64’s January 1, 2018 deadline to begin issuing licenses for cannabis businesses and allow recreational marijuana sales to begin.













The Simple Answer:


1. Marijuana is still federally an illegal drug;
2. Employers can still enforce drug policies and drug test employees;
3. So far, courts have not treated marijuana the same as traditional prescription drugs (with one new exception); and,
4. So far, employers do not need to accommodate marijuana.




Courts Agree! (Kind of)








The Courts:

Several courts have held that employers may prohibit marijuana use in their workforces:

- In 2008, [California's](#) highest Court found the state's medical marijuana law only protects individuals from criminal prosecution, ruling in favor of an employer who refused to hire an injured vet using marijuana to treat chronic back pain after he failed his pre-employment drug test.

Ross v. RagingWire Telecommunications, Inc., 42 Cal.4th 920







The Courts:

- 2010, **Oregon** - medical marijuana's status as an illegal drug under federal law means that no employer should be forced to accommodate it's use.
- 2011, **Washington** - employers need not accommodate an employee's use of medical marijuana.
- 2012, **Montana** - medical marijuana users and providers have no special right to their employment.
- 2015 **Colorado** - employers still free to prohibit employee marijuana use in their workforces, and could still discipline and terminate employees who test positive.
- 2016, **New Mexico** - state law does not require employers to accommodate medical marijuana use.



BUT, we all know, it's never quite that simple ...






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Many medical marijuana states, including California, allow employers to _____ against medical marijuana users.

Start Timer

GO TO RESPONSE











 Correct
  Wrong
  Clear
  Boo
  Silence

discriminate

Start Timer

GO TO RESPONSE


 Correct
  Wrong
  Clear
  Boo
  Silence



Of Course, it's a Bit More Complicated – ANTI- Discrimination Statutes:

- Many medical marijuana states still allow employers to "discriminate" against medical marijuana users, including California.
- However, other states have anti-discrimination policies, while still more seem to be heading in that direction.









Of Course, it's a Bit More Complicated – ANTI- Discrimination Statutes:

Examples:



- New York** –has incorporated medical marijuana users into other laws prohibiting discrimination based on disability. N.Y. Pub. Health Law § 3369.
- Rhode Island** - "No employer may refuse to employ or penalize, a person **solely for being a cardholder**" R.I. GEN. LAWS § 21-28.6-4(c)
 - Current Case:* Graduate student represented by the ACLU suing company for not being hired for paid internship after disclosing medical marijuana use in job interview.

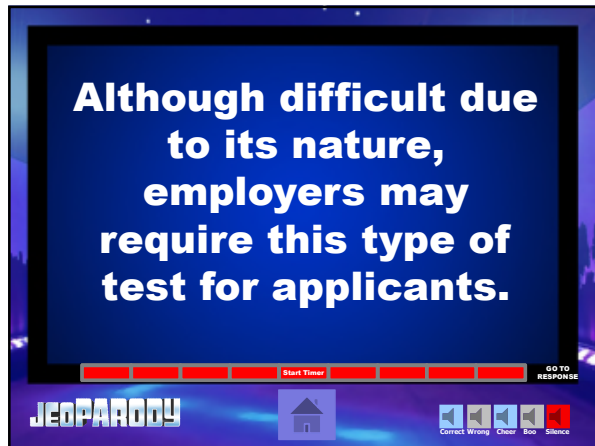



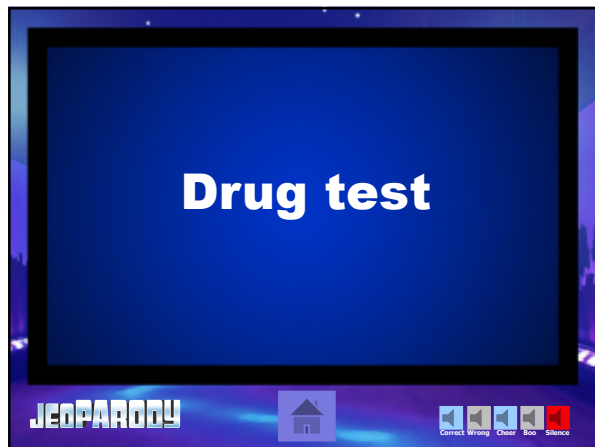


Barbuto v. Advantage Sales & Marketing, LLC (Mass. July 17, 2017)


- The Court held that a California sales and marketing firm discriminated against an employee of its Massachusetts operation who used marijuana to treat Crohn's disease when it fired her for failing a drug test.
 - employers **can't use blanket anti-marijuana policies** to dismiss workers whose doctors have prescribed the drug to treat their illnesses."
 - An employer may still refuse to accommodate if use "**would cause an undue hardship to the employer's business.**"













Drug Testing



- Employers may require applicants to undergo drug testing.
- However, the law is evolving – The District of Columbia temporarily passed the Prohibition of Pre-Employment Marijuana Testing Act of 2015, which prohibits employers from testing employees for marijuana use until after an offer for employment has been made.
- Also, Employers may also experience difficulty hiring.
- Should you change your policy language??









Drug Testing

WATCH OUT FOR PRIVACY - LEGAL OFF-DUTY ACTIVITY LAWS:

- While you may prohibit use in the workplace, current technology does not match the law. Most drug tests detect THC in the system for several days and cannot detect current inebriation. However, clinical trials are underway.
- TO WATCH - Many states (including CA) have Legal Off Duty Conduct Laws protecting legal off duty conduct.





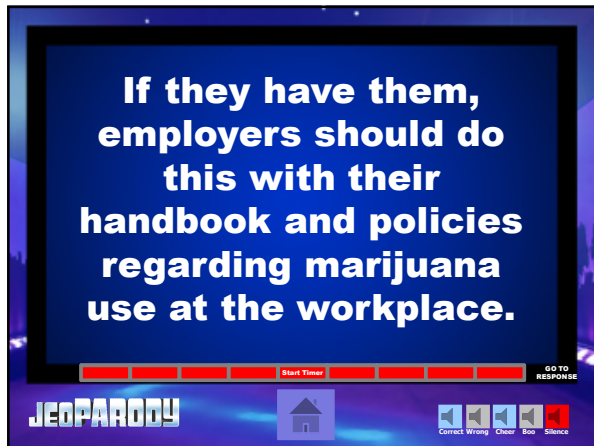
Drug Testing

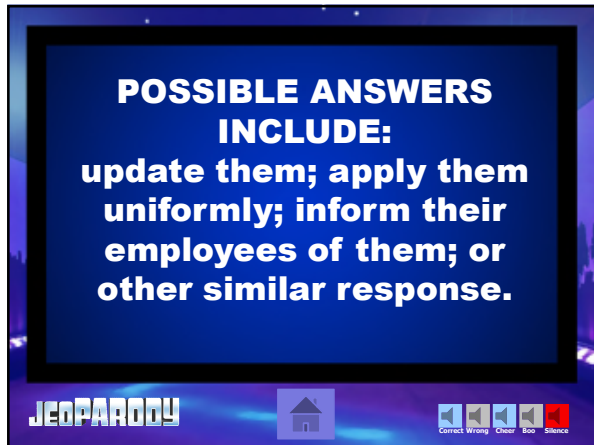
WATCH OUT FOR PRIVACY - LEGAL OFF-DUTY ACTIVITY LAWS:

Coats v. Dish Network, (June 15, 2015)

- Colorado paraplegic employee terminated after positive random drug test result.
- No safety sensitive position; did not impact job performance.
- Used while off-duty legally, to lessen symptoms of his condition.
- Argued a violation of CO's "Lawful Activities Statute."
- ***Court held that behavior was not protected by the statute;*** the conduct is not "lawful" Federally.

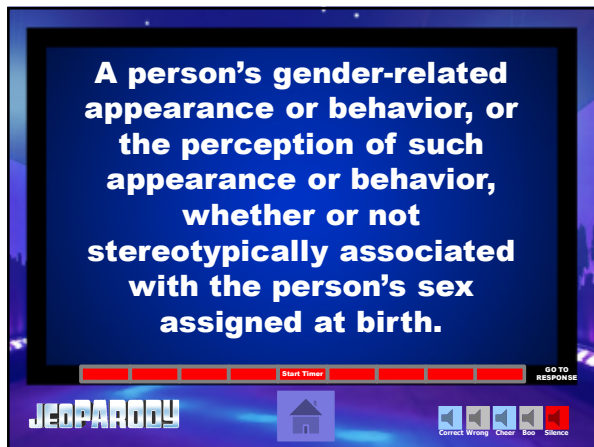



















What Is This?

- California Fair Employment and Housing Council issued regulations regarding gender identity and gender expression in employment.
- Regulations became effective July 1, 2017.




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Definitions

- "Gender expression" means a person's gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth.




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Each person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.

Start Timer GO TO RESPONSE



Correct Wrong Clear Sno Silence






What Is This?



- California Fair Employment and Housing Council issued regulations regarding gender identity and gender expression in employment.
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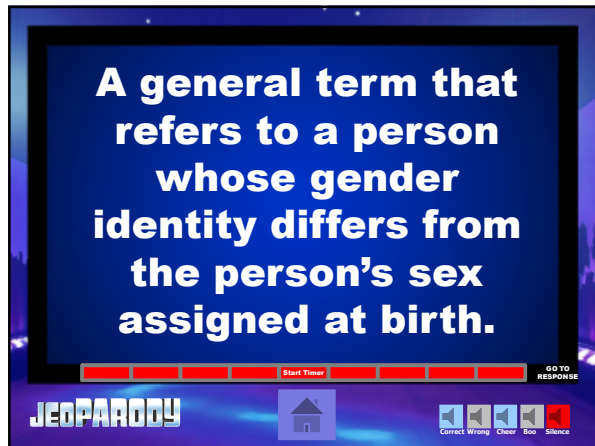


Definitions


- "Gender identity" means each person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.











Definitions



- “Transgender” is a general term that refers to a person whose gender identity differs from the person’s sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as “transsexual.”









This process may include, but is not limited to, changes in name and pronoun usage, restroom and facility usage, participation in employer-sponsored activities (e.g. sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.

Start Timer

GO TO RESPONSE


Transitioning














What Is This?

- California Fair Employment and Housing Council issued regulations regarding gender identity and gender expression in employment.
- Regulations became effective July 1, 2017.




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Definitions

- "Transitioning" is a process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include, but is not limited to, changes in name and pronoun usage, restroom and facility usage, participation in employer-sponsored activities (e.g. sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.




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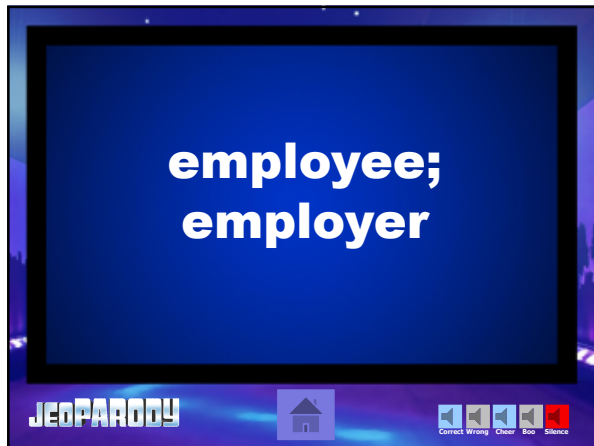
An employer and employee may communicate about the employee's sex, gender, gender identity, or gender expression when the _____ initiates communication with the _____ regarding the employee's working conditions.

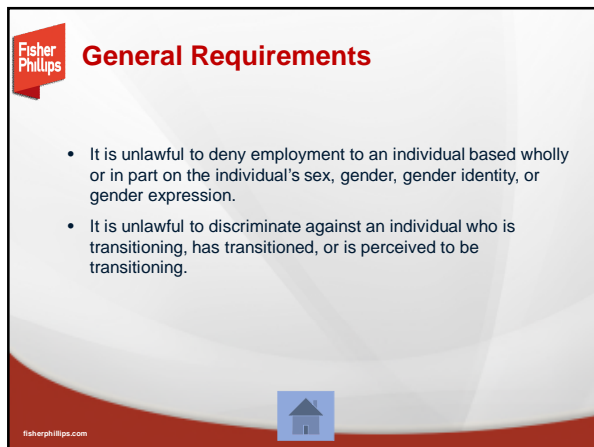
Start Timer GO TO RESPONSE

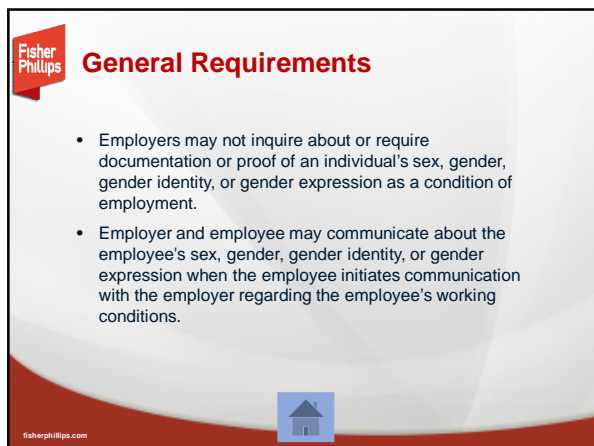
JEOPARDY!




Correct Wrong Cheer Boo Silence










General Requirements

- Employers must permit employees to perform jobs or duties that correspond to the employee's gender identity or gender expression, regardless of the employee's assigned sex at birth.
- Employers may not designate jobs as exclusively for one sex.
- Equal rest periods must be provided without regard to sex or gender identity.




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Employees must be permitted to use restrooms and other facilities that correspond to the employee's gender _____ or _____, regardless of the employee's assigned sex at birth.

Start Timer GO TO RESPONSE

JEOPARDY!



Correct Wrong Clear Boo Silence

**identity;
expression**

JEOPARDY!



Correct Wrong Clear Boo Silence



Restrooms and Other Facilities

- Employees must be permitted to use restrooms and other facilities that correspond to the employee's gender identity or gender expression, regardless of the employee's assigned sex at birth.
- Single-occupancy restrooms must have gender-neutral signage, such as "Restroom," "Unisex," "Gender Neutral," "All Gender Restroom," etc.
- "Porta-Potty" exception for non-flush toilets.






Restrooms and Other Facilities


- Employers must provide locking toilet stalls, staggered schedules for showering, shower curtains, or other feasible methods of ensuring privacy.
- Transgender employees may not be required to use single-user restroom.






Restrooms and Other Facilities


- Employees need not undergo, or provide proof of, any medical treatment or procedure, or provide any identity document, to use facilities designated for use by a particular gender.
- Employer may make a reasonable and confidential inquiry of an employee for the sole purpose of ensuring access to comparable, safe, and adequate multi-user facilities.





Hazardous Working Conditions

- If working conditions pose a greater danger to the health, safety, or reproductive functions of employees of one sex versus another sex working under the same conditions, employer must make reasonable accommodation to:
- Alter the working conditions to eliminate the greater danger, unless it can be demonstrated that the modification would impose an undue hardship on the employer. Alteration of working conditions includes, but is not limited to, acquisition or modification of equipment or devices and extension of training or education, or
- Upon the request of an employee of the more endangered sex, transfer the employee to a less hazardous or strenuous position for the duration of the greater danger, unless it can be demonstrated that the transfer would impose an undue hardship on the employer.










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If an employee requests to be identified with a preferred gender, name, and/or pronoun, including gender-neutral pronouns, an employer must do this.

Start Timer

GO TO RESPONSE


















An employer must honor that request.

Start Timer

GO TO RESPONSE







Names and Pronouns



- If an employee requests to be identified with a preferred gender, name, and/or pronoun, including gender-neutral pronouns, an employer must honor that request.
- An employer may use an employee's gender or legal name as indicated in a government-issued identification document where necessary to meet a legally-mandated obligation, but otherwise must identify the employee in accordance with the employee's gender identity and preferred name.








If an employer applies dress and grooming standards, _____ may choose which gender's standards to will follow.



Start Timer






GO TO RESPONSE





employee








Dress Codes and Grooming

- Employers may not impose physical appearance, grooming or dress standards which are inconsistent with an individual's gender identity or gender expression unless required by business necessity.
- Basic rule: You can apply dress and grooming standards but employees may choose which gender's standards they will follow.

FINAL JEOPARDY!










With some exceptions, such as porta-potties, single-occupancy restrooms must have _____ signage.







