


---



---



---



---



---



---



---



---



---

**Topics:**

1. Numbers in Marijuana
2. Help! My Employee is Using Marijuana in the Workplace.
3. What Does This Mean? Definitions by the Department of Fair Employment and Housing
4. My Employee is Transgender. Can I do This?

**JEOPARDY** Correct Wrong Cheer Boo Silence

---



---



---



---



---



---



---



---



---

**Also known as the Compassionate Use Act, this California Proposition was approved by voters and legalized the use of medical marijuana under Health and Safety Code section 11362.5**

Start Timer GO TO RESPONSE

**JEOPARDY** Correct Wrong Cheer Boo Silence

---



---



---



---



---



---



---



---



---

**Prop. 215**

**JEOPARDY**

Correct Wrong Cheer Boo Silence

---



---



---



---



---



---

**Fisher Phillips**

**What Marijuana Legalization in California Means for You**



[fisherphillips.com](http://fisherphillips.com)

---



---



---



---



---



---

**Fisher Phillips**

**A Look Back in Time...**

**1970:** The Controlled Substance Act places "Marijuana" as a Schedule 1 controlled substance which is illegal without any exceptions. 21 U.S.C. § 812(b)

**1996:** California voters approve Prop 215, The Compassionate Use Act, legalizing the use of medicinal marijuana. (Health & Safety Code § 11362.5)

[fisherphillips.com](http://fisherphillips.com)




---



---



---



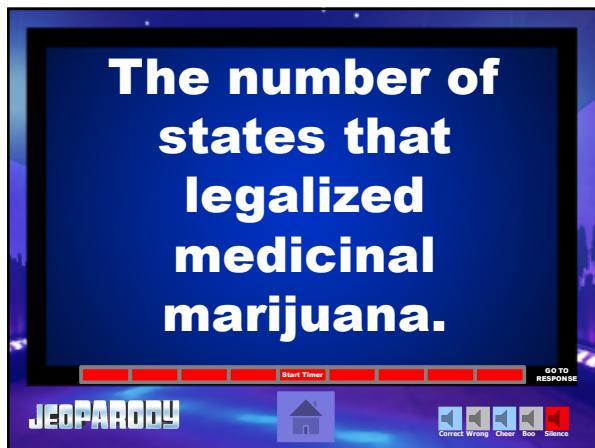
---



---



---




---



---



---



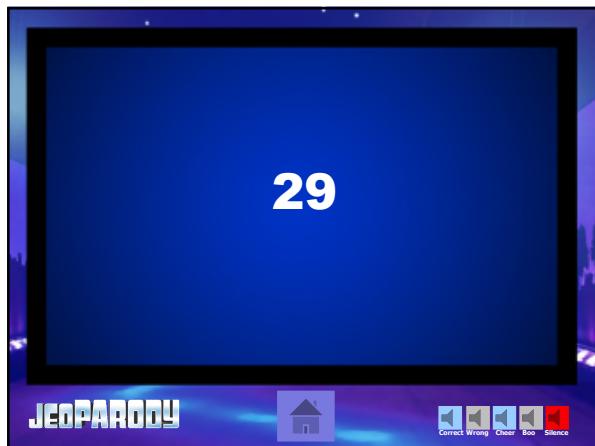
---



---



---




---



---



---



---



---



---

**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

fisherphillips.com

---



---



---



---



---



---

**Under the Controlled Substances Act, Marijuana is a Schedule \_\_\_ drug.**

Start Timer      GO TO RESPONSE

JEOPARDY      

Correct   Wrong   Cheer   Boo   Silence

---



---



---



---



---



---



---

**One**

JEOPARDY      

Correct   Wrong   Cheer   Boo   Silence

---



---



---



---



---



---



---

**Fisher Phillips**      **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.



[fisherphillips.com](http://fisherphillips.com)

---



---



---



---



---



---



---

## Fisher Phillips Status of the Law – Federal

## Fisher Phillips Status of the Law - Federal

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




---



---



---



---



---



---




---



---



---



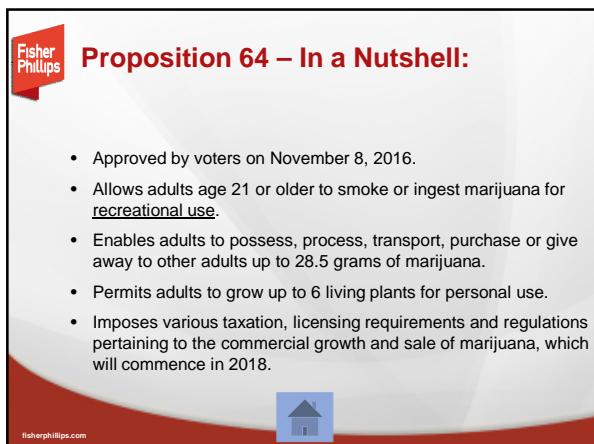
---



---



---




---



---



---



---



---



---



## 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.

fisherphillips.com



## 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.

fisherphillips.com



## 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.

fisherphillips.com




---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---

**Under Proposition 64, which legalized recreational adult-use marijuana, employers need not do this when it comes to marijuana use, consumption, or possession in the workplace.**

Start Timer      GO TO RESPONSE

**JEOPARDY**

Correct Wrong      Cheer      Boo      Silence

---



---



---



---



---



---



---

**POSSIBLE ANSWERS INCLUDE: permit, accommodate, allow**

**JEOPARDY**

Correct Wrong      Cheer      Boo      Silence

---



---



---



---



---



---



---

**Proposition 64 – For Employers:**

Fisher Phillips

- Employers still entitled to enact and enforce policies related to marijuana. You do not need to tolerate marijuana use.
- Prop 64 expressly states, that the statute does not:
  - Affect/restrict employers rights to maintain a drug and alcohol free workplace;
  - Require employers to permit or accommodate marijuana use/consumption/possession in the workplace; or
  - Affect the ability of employers to have policies prohibiting use by employees and applicants, or prevent employers from complying with state or federal law.

fisherphillips.com

---



---



---



---



---



---



---

**Fisher Phillips**

## 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.

[fisherphillips.com](http://fisherphillips.com)




---



---



---



---



---



---



---



---



---

**Fisher Phillips**



## Courts Agree! (Kind of)



[fisherphillips.com](http://fisherphillips.com)

---



---



---



---



---



---



---



---



---

**Fisher Phillips**

## 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

[fisherphillips.com](http://fisherphillips.com)




---



---



---



---



---



---



---



---



---

**Fisher Phillips** **The Courts:**

- 2010, **Oregon** - medical marijuana's status as an illegal drug under federal law means that no employer should be forced to accommodate its 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 ...**

[fisherphillips.com](http://fisherphillips.com)




---



---



---



---



---



---



---



---



---

**Many medical marijuana states, including California, allow employers to \_\_\_\_\_ against medical marijuana users.**

**JEOPARDY**

Start Timer      GO TO RESPONSE



Correct   Wrong   Cheer   Boo   Silence

---



---



---



---



---



---



---



---



---

**discriminate**

**JEOPARDY**

Correct   Wrong   Cheer   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.

fisherphillips.com




---



---



---



---



---



---



---



---



---



### 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.

fisherphillips.com




---



---



---



---



---



---



---



---



---



### 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.**"

fisherphillips.com




---



---



---



---



---



---



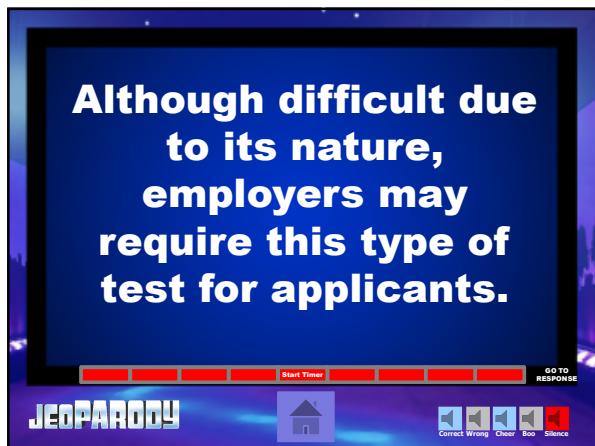
---



---



---



---

---

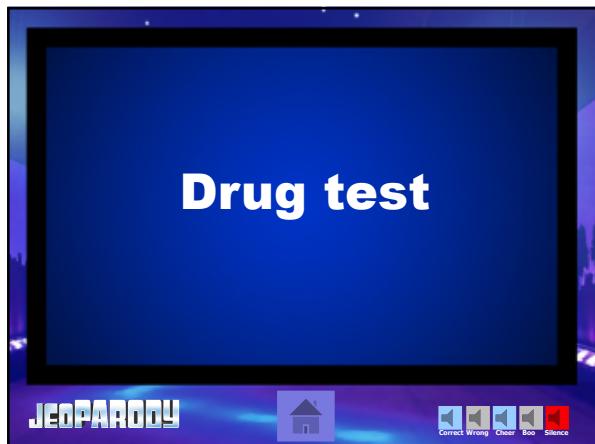
---

---

---

---

---



---

---

---

---

---

---

---



---

---

---

---

---

---

---

**Fisher Phillips** **Drug Testing**



- Employers may require applicants to undergo drug tests.
- 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??



[fisherphillips.com](http://fisherphillips.com)

---



---



---



---



---



---



---



---



---

**Fisher Phillips** **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.



[fisherphillips.com](http://fisherphillips.com)

---



---



---



---



---



---



---



---



---

**Fisher Phillips** **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.



[fisherphillips.com](http://fisherphillips.com)

---



---



---



---



---



---



---



---



---

If they have them,  
employers should do  
this with their  
handbook and policies  
regarding marijuana  
use at the workplace.

Start Timer      GO TO RESPONSE

JEOPARDY

Correct Wrong      Cheer      Boo      Silence

---



---



---



---



---



---

**POSSIBLE ANSWERS  
INCLUDE:**

**update them; apply them  
uniformly; inform their  
employees of them; or  
other similar response.**

JEOPARDY

Correct Wrong      Cheer      Boo      Silence

---



---



---



---



---



---

**Fisher Phillips**

**What Do We Do?**

1. Decide your position based on your business needs and business culture;
2. Consider a proactive memo to employees;
3. Update handbook and policy if needed, but ... BE CAREFUL;
4. Apply policies uniformly;
5. Make Sure You're Not the "Test Case";
6. Publicize your policy and train; supervisors and managers;
7. Keep an eye on new developments in the law.





[fisherphillips.com](http://fisherphillips.com)

---



---



---



---



---



---



# California's New Regulations On Transgender Employees

**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.**

Gender expression

JEOPARDY!

Correct Wrong Clear Boo Silence

**Fisher Phillips** **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.

fisherphillips.com




---



---



---



---



---



---



---



---

**Fisher Phillips** **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.

fisherphillips.com




---



---



---



---



---



---



---



---

**JEOPARDY**

**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   Cheer   Boo   Silence

---



---



---



---



---



---



---



---




---



---



---



---



---



---

**Fisher Phillips** **What Is This?**

fisherphillips.com

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

fisherphillips.com

---



---



---



---



---



---

**Fisher Phillips** **Definitions**

fisherphillips.com

• “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.

fisherphillips.com

---



---



---



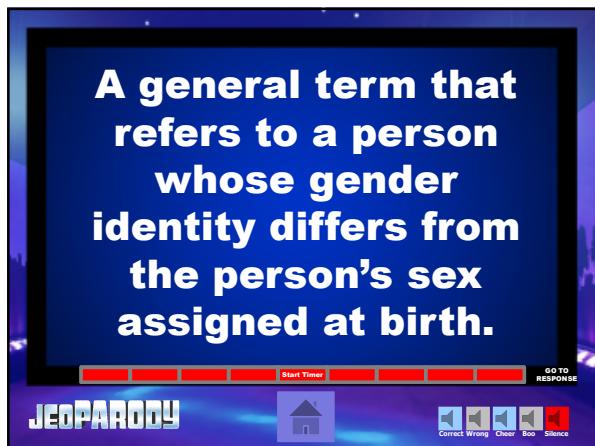
---



---



---



---

---

---

---

---

---

---



---

---

---

---

---

---

---

**Fisher Phillips** 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.

fisherphillips.com

---

---

---

---

---

---

---

**Fisher Phillips** **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.”

fisherphillips.com

---



---



---



---



---



---



---



---

**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

**JEOPARDY**

---



---



---



---



---



---



---



---

**Transitioning**

**JEOPARDY**

---



---



---



---



---



---



---



---

**Fisher Phillips**

## 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.

fisherphillips.com




---



---



---



---



---



---



---



---



---

**Fisher Phillips**

## 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.

fisherphillips.com




---



---



---



---



---



---



---



---



---

**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

**JEOPARODY**



Correct Wrong      Cheer      Boo      Silence

---



---



---



---



---



---



---



---



---




---



---



---



---



---



---



---



---

**Fisher Phillips** General Requirements

- It is unlawful to deny employment to an individual based wholly or in part on the individual's sex, gender, gender identity, or gender expression.
- It is unlawful to discriminate against an individual who is transitioning, has transitioned, or is perceived to be transitioning.

fisherphillips.com

---



---



---



---



---



---



---



---

**Fisher Phillips** General Requirements

- Employers may not inquire about or require documentation or proof of an individual's sex, gender, gender identity, or gender expression as a condition of employment.
- Employer and employee may communicate about the employee's sex, gender, gender identity, or gender expression when the employee initiates communication with the employer regarding the employee's working conditions.

fisherphillips.com

---



---



---



---



---



---



---



---

**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.

[fisherphillips.com](http://fisherphillips.com)





---



---



---



---



---



---



---



---

**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**






---



---



---



---



---



---



---



---

**identity;  
expression**

**JEOPARDY**





---



---



---



---



---



---



---



---



## 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.



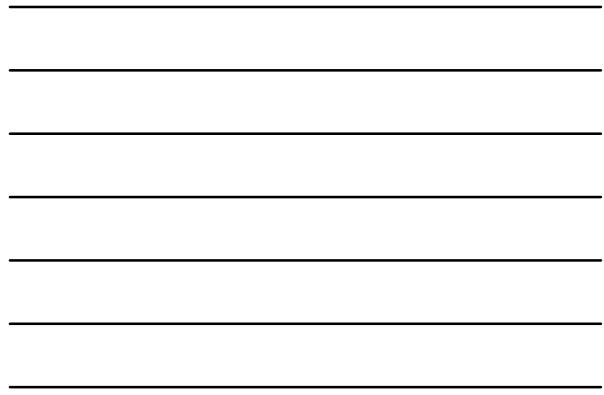
## Restrooms and Other Facilities

- 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.



**Fisher Phillips** 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.

[fisherphillips.com](http://fisherphillips.com)




---



---



---



---



---



---



---



---



---

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

**JEOPARDY**



Correct   Wrong   Cheer   Boo   Silence

---



---



---



---



---



---



---



---



---

An employer must honor that request.

**JEOPARDY**



Correct   Wrong   Cheer   Boo   Silence

---



---



---



---



---



---



---



---



---

**Fisher Phillips** 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.

[fisherphillips.com](http://fisherphillips.com)

---



---



---



---



---



---



---



---



---

**JEOPARDY**

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

Start Timer      GO TO RESPONSE

---



---



---



---



---



---



---



---



---

**JEOPARDY**

**employee**

Correct   Wrong   Cheer   Boo   Silence

---



---



---



---



---



---



---



---

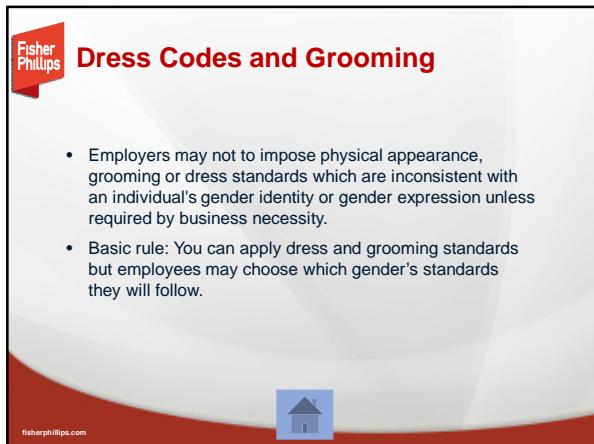


---

**Fisher Phillips** Dress Codes and Grooming

- Employers may not to 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.

fisherphillips.com




---



---



---



---



---



---



---



---



---

**FINAL JEOPARODY**

JEOPARDY




---



---



---



---



---



---



---



---



---

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

Start Timer

GOTO PROMPT (RESPONSE)

JEOPARDY




---



---



---



---



---



---



---



---



---



---

---

---

---

---

---

---



---

---

---

---

---

---

---