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**RESTROOM  
ACCESS**

All people deserve the right to use a restroom that aligns with their gender. All too often, however, transgender and non-binary people are deterred from using public restrooms, and, in some cases, are denied access to them. The absence of safe and accessible public restrooms can make it unnecessarily difficult for trans people simply to go about their daily lives.

While some trans or non-binary individuals may access public restrooms with ease, many others find using a restroom to be a source of concern, anxiety or fear. It is important to recognize that sexual assaults in public restrooms are extremely rare. Unfortunately, however, physical as well as verbal assaults on transgender people in bathrooms are not rare. Many transgender people have been physically violated or harassed by people who believe they are in the “wrong” bathroom.

[T]he human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to [a toilet], in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity....

UN General Assembly. (2015). Resolution 70/169: The Human Rights to Safe Drinking Water and Sanitation.

Being questioned, confronted or stared at in restrooms can lead some trans and non-binary people to avoid public restrooms. Some of the strategies we use in avoiding restrooms, however, can have less than desirable effects on other aspects of our lives. Trans and non-binary individuals may avoid public restrooms by avoiding public places altogether or staying at home, increasing social isolation and possibly contributing to symptoms of depression or anxiety.

A survey of transgender and non-binary people in 2015 revealed that 59 percent of trans people had avoided a restroom in the last year because of concerns about harassment, and one in four had been told they were in the wrong restroom.

(James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.)

Some people will avoid public restrooms by “holding it,” or not evacuating their bodily waste. Medical professionals advise that when our bodies tell us that it’s time to use a restroom, we should do so as soon as we’re able. When individuals don’t have easy access to restrooms, in addition to the physical discomfort that occurs, physical problems can result. It is important that everyone, including trans and non-binary individuals, have the ability to use a restroom when necessary, rather than “holding it” when we feel the need.

To deal with these challenges, many trans and non-binary individuals will try to limit their intake of liquids and food throughout the day to avoid the need to use a restroom. While

restricting intake of liquid and food can be an understandably tempting strategy, depriving ourselves of food or not drinking sufficient water or other liquids can cause physical problems.

In a 2015 survey, 54% of transgender or non-binary people reported having physical problems like dehydration and kidney and bladder infections from avoiding public restroom use.

(James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.)

Making sure that we drink enough liquids every day and remove our bodily waste when needed is critical to maintaining our health and wellbeing. Later in this section are other suggested strategies for accessing public restrooms.

## RESTROOM ACCESS IN WISCONSIN

### Public Restrooms

In Wisconsin, there are no laws that directly apply to public restroom access by gender non-conforming people. No law restricts our ability to select a sex-segregated facility to use. On the other hand, no law clearly safeguards our ability to use the restroom that most closely aligns with our gender identity. Which restroom we will use is therefore a matter of choice, based on many factors, including our personal preferences and assessments of our safety.

Federal and state laws, while not applying to public restroom access specifically, have been interpreted to provide some legal protections to transgender individuals. Discrimination against transgender and non-binary people can be considered sex discrimination. For that reason, you may want to consider submitting a complaint to the [Equal Rights Division of Wisconsin's Department of Workforce Development](#) if you experience harassment or discrimination or denial of entry to a public restroom (see "Resources for Employees" at the end of this section for the website).

#### Localities That Prohibit Gender Identity Discrimination in Wisconsin

Appleton  
Cudahy  
Dane County (Madison)  
De Pere  
Janesville  
Madison  
Milwaukee  
Milwaukee County

Some cities and counties in Wisconsin have enacted municipal laws that do protect our right to access the most appropriate sex-segregated restroom facility. These local laws vary in

their scope, but some of them do prohibit discrimination based on gender identity in places of public accommodation, which are spaces and venues that are open to the public-at-large, whether publicly or privately owned, like a park or a retail store.

Familiarize yourself with the local laws where you live. If you experience discrimination or harassment in a public restroom, you may be able to submit a complaint to a local agency that is responsible for enforcing the municipal law.

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*Researchers used criminal report data from several Massachusetts localities to assess differences in the rates of crime in areas with and without public accommodation laws that included gender identity protections. Results showed that immediately after the laws' passage, there were fewer incidents of privacy and safety violations in places with gender-identity inclusive public accommodations laws than in comparable areas without the laws.*

*"Opponents of public accommodations laws that include gender identity protections often claim that the laws leave women and children vulnerable to attack in public restrooms," said lead author Amira Hasenbush, a law and policy fellow at the Williams Institute. "But this study provides evidence that these incidents are rare and unrelated to the laws."*

*Williams Institute. (2018). Gender-identity inclusive nondiscrimination laws in Massachusetts. Retrieved January 23, 2019 from <https://williamsinstitute.law.ucla.edu/press/ma-pub-accom-press-release/>.*

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## Restrooms at Work

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Transgender and non-binary people in Wisconsin are protected from discrimination at work by overlapping federal, state and local laws. Neither federal or state workplace discrimination laws explicitly prohibit discrimination based on gender identity, but they do prohibit discrimination based on sex. While Wisconsin courts have not yet declared that discrimination against transgender people at work is unlawful sex discrimination, more and more courts around the country are making that determination. It is only a matter

"All employees, including transgender employees, should have access to restrooms that correspond to their gender identity."

OSHA. (2015). Best Practices: Guide to Restroom Access for Transgender Workers. Retrieved January 23, 2019 from <https://www.osha.gov/Publications/OSHA3795.pdf>.

of time before a Wisconsin court has an opportunity to state whether gender identity discrimination is in fact considered illegal sex discrimination.

The best practice for private employers, given the state of the law, is to operate on the basis that transgender and non-binary people are protected from workplace discrimination, regardless of the legal theory. Protection from discrimination extends to restroom access. Employers who maintain sex-segregated restrooms therefore should ensure that transgender employees are able to use the restroom that most closely aligns with their gender identity. It's acceptable for an employer also to provide a single-user restroom in the workplace, and for transgender employees to choose to use the single-user restroom, but employers may never restrict you to using only the single-user facility.

For public, or government, employees, a very recent change to Wisconsin law created explicit legal protection from discrimination based on gender identity. The 2019 executive order by Wisconsin's governor applies to public sector employees and is the only law applicable to Wisconsin workplaces that explicitly makes gender identity discrimination illegal.

Transgender or non-binary workers who have experienced harassment or discrimination when accessing restrooms at work may submit a complaint about their employer either to the federal Equal Employment Opportunity Commission or the Equal Rights Division of Wisconsin's Department of Workforce Development. If you live in one of the cities or towns listed above, where local laws also prohibit gender identity discrimination, you may be able to submit a complaint to a local agency responsible for enforcing the municipal law.

(See the section "Other Legal Protections in Wisconsin" for additional discussion of workplace legal protections.)

### **Restrooms in Schools**

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News headlines in recent years are increasingly reflecting the many needs of transgender and non-binary youth, including in school settings. The legal landscape for trans and non-binary students' access to restrooms has changed in recent years also, and it likely will continue to evolve as the presidential administration considers its position on legal protections for students. Regardless of the opinion of the presidential administration or the agencies it oversees, like the Departments of Education and Justice, a longstanding law enacted by Congress provides transgender students with legal protection from discrimination in schools. The presidential administration's actions have no effect on this law or how it is applied by courts.

Title IX is the federal civil rights law that applies to any school, including colleges and universities – public or private – that receives funds from the federal government, which means nearly all schools must comply with the law. Title IX dictates that students be treated equally based on sex. While the law does not explicitly prohibit discrimination against students based on their gender identity, courts in Wisconsin have declared that gender identity discrimination is unlawful sex discrimination under the law.

Such determinations mean that transgender and non-binary students must be treated equally with their non-transgender peers and allowed to access sex-segregated restrooms and other sex-segregated spaces in schools that most closely align with their gender identity. Forcing a student to use a restroom based on the sex they were assigned at birth is not appropriate and it is unlawful. Similarly, a school may make a single-user restroom available for use by transgender or non-binary students, but the school may never restrict trans or non-binary students to using only the single-user facility.

If you, or a student you know, has experienced harassment, discrimination or denial of access to a restroom, locker room or other sex-segregated space at school, you may take legal action against your school if necessary. You may also wish to file a complaint about discrimination under Title IX with the federal Department of Education. However, please remember that the Department of Education has taken the position that Title IX does not protect transgender students. As a result, the Department may not investigate your complaint.

For strategies and support with asserting your rights in a school setting and working with school administrators, see the list of additional resources at the end of this section.

### A Note About “Bathroom Bills”

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While lawmakers in several states in the U.S. have attempted to enact “bathroom bills” in recent years, such efforts to restrict trans and non-binary people’s access to sex-segregated restrooms have been largely unsuccessful. Bathroom bills that attempt to prohibit individuals from using the restroom that aligns with their gender identity have faced more scrutiny by lawmakers and from the public since North Carolina enacted the first statewide bathroom bill in 2016. The following year lawmakers in that state repealed the restrictive

North Carolina’s bathroom bill will “cost the state more than \$3.76 billion in lost business over a dozen years....”

Emery P. Dalesio. (2017, Mar. 27) Price tag of North Carolina’s LGBT law: \$3.76B. *Associated Press*. Retrieved from <https://apnews.com/fa4528580f3e4a01bb68bcb272f1f0f8>.

bathroom law because of overwhelming public outrage from across the country and because the state suffered severe economic consequences. Companies, professional sports associations and individuals chose not to conduct business in North Carolina, sending an effective message to state lawmakers about enshrining discrimination against trans and non-binary people.

Because of North Carolina’s experience, only a few legal attempts by states to prevent trans individuals from using restrooms that align with their gender identity have succeeded. Some of these laws are intended to apply to all public restrooms, while other states’ laws apply

only to restrooms in public schools. It is likely, whatever the scope of these laws, that they will be challenged in courts in the future.

## STRATEGIES FOR RESTROOM USE

Trans and non-binary individuals should not have to shoulder the burden of protecting ourselves from others who decide to “police” our restroom use. We can increase our sense of control of these situations by developing strategies both for accessing restrooms and responding to hostile or confrontational individuals. Below are some strategies that transgender and non-binary people use in restrooms or other sex-segregated spaces like dressing rooms or locker rooms.

### 1. Know Your Toilets!

Pay attention to what kind of public restrooms are near places where you frequently spend time. It is often much easier and less stressful to access a single-user restroom rather than a multi-user, because you will obviously be alone inside. If you know of single-user restrooms, or “unisex” or “family” restrooms, keep those restroom locations in mind when you need a bathroom. Remember, too, that many chains or franchised businesses design all of their locations similarly, so that restroom design may also be the same regardless of location. All Starbucks locations, for instance, have single-user (with sex-segregated signs) restrooms!

Check with local organizations or groups by and for trans and non-binary individuals. Some groups maintain lists of local accessible public restrooms. If you participate in any groups, organizations or online forums made up of trans or non-binary people, ask others for their recommendations.

Finally, remember that many cities and towns are making efforts to be more inclusive of transgender and non-binary people. Local government buildings, like a city hall, may have single-user and/or gender-inclusive multi-user restrooms, even if local businesses do not.

### 2. Come Back Later.

If you find yourself in a multi-user restroom or in a situation in which you feel unsafe for any reason because of another individual, you do not need to stay in the restroom – you can leave and find another restroom or come back after that person exits, by yourself or with a companion.

### 3. Use a Bathroom Buddy!

One very common way that trans and non-binary people deal with concerns about using public restrooms is to share the love! If you are able, take a buddy (or several) with you into sex-segregated multi-user restrooms. Having another person with us can help avoid or diffuse problems. Other people may be less likely to confront you when you’re part of a group. And they will observe you with your buddy, interacting or talking or engaging in hygiene or cosmetic activities together, which helps convey



that you are in the right place. Just having a friend with us (or even a willing person that we don't know well) can decrease the concerns or anxiety we may have. Finally, if another person does become confrontational, our buddy will have our back. It may be easier for a bathroom buddy to deal with a difficult person than it will be for us, because our buddy may not be emotionally impacted by the interaction in the same way.

Some groups and organizations by and for trans people maintain “bathroom buddy” programs, especially at special events. Check in with these groups or look for them at events. Even if you choose not to use a bathroom buddy, you'll know where to find support if you need it.

If you decide to use a bathroom buddy, consider and share with them what you want them to do for you. Do you want your buddy to come inside, but just hang out by the door in case you need support? Would you rather they position themselves near the stall you're using? Do you want to talk with them or be silent? What do you want them to do while you're washing up or using a mirror? And, most important, let them know how you want to handle potential incidents: do you prefer to leave the restroom immediately or to stay and finish whatever you're doing? If someone becomes confrontational, do you want to address them, or not? Do you want your buddy to address them, or not? Whatever you decide, knowing that you and your buddy have a plan can alleviate some of the concerns or anxiety that you might be feeling.

#### 4. Have a Plan.

Think in advance about your options and possible responses if you do experience harassment or denial of entry to a restroom. While we all respond differently to these experiences, it can be helpful to keep a few tactics in mind:

**a. Stay calm** and try to assess your personal safety. If you feel unsafe for any reason, leave the restroom. You do not need to speak with anyone who is challenging your presence, and, in some cases, responding to or arguing with them will have the opposite effect you desire and may escalate the interaction. You can come back later, return with a friend or find another restroom. If you do decide to address the person, try to speak in an even and calm manner, and inform them that you are using the appropriate restroom for your gender.

**b. Report** the incident to a manager, owner or person in authority. Tell them that you are using the appropriate restroom for your gender. If they still do not allow you to access the restroom or if they do not respond appropriately to a complaint of harassment, consider making a complaint with appropriate government bodies.

**c. Educate** people in authority. If you feel able to advocate for change in this way, consider keeping written information or resources on hand that you can share when needed.



### 5. Temporarily Change Signs.

If you're hosting – or attending – an event, consider the possibility of temporarily replacing or covering signs that designate sex-segregated restrooms as for “women” and “men.” Businesses and sites that host parties and events are becoming more familiar with these issues. If a venue has sex-segregated restrooms, speak with a representative and offer temporary signs that can be used to create a more welcoming and inclusive environment. Some examples of temporary signs are included below and there are many, many more available online that can be printed and posted over existing signage.



### 6. Share the Facts & Advocate for Change.

We know that transgender and non-binary people deserve to use restrooms in peace – just like anyone else. Often, people who engage in confrontational or discriminatory behavior do so based on faulty ideas of who trans people are. There are many sources of information and education available, including online, about trans people and restroom access. Check out some of the resources in the list at the end of this section, and, if you are able, consider sharing fact-based information with others who could benefit from it.

Similarly, if you work or spend time in places like coffee shops, restaurants, bars, offices or other businesses, you can advocate for converting sex-segregated facilities into gender-inclusive restrooms. Consider sharing information with employees or managers about gender-inclusive facilities. This is especially easy to do with single-user restrooms. And the benefits of inclusive restrooms reach well beyond trans and non-binary individuals. Allowing families, partners or caregivers to use the restroom together, regardless of gender, makes being in public spaces much easier for many different kinds of people and families.

## ADDITIONAL RESOURCES

FORGE, Background Materials on Anti-Trans “Bathroom Bills”

<http://forge-forward.org/wp-content/docs/bathroom-bills-resource-sheet.pdf>

FORGE, Trans People and Bathrooms: Safety for All

<http://forge-forward.org/wp-content/docs/bathroom-talking-points-anti-violence-FAQ-11-2015.pdf>

**Stalled! Online**

<https://www.stalled.online/>

**Transgender Law Center, Peeing in Peace: A Resource Guide for Transgender Activists and Allies**

<https://transgenderlawcenter.org/resources/public-accommodations/peeing-in-peace>

**Transgender Law Center, Public Accommodations Resources**

<https://transgenderlawcenter.org/resources/public-accommodations>

## **Resources for Employees**

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**EEOC (Equal Employment Opportunity Commission)**

<https://www.eeoc.gov/employees/howtofile.cfm>

**National Center for Transgender Equality, Issues: Employment**

<https://transequality.org/issues/employment>

**National Center for Transgender Equality, Know Your Rights: Employment (General)**

<https://transequality.org/know-your-rights/employment-general>

**National Center for Transgender Equality, Know Your Rights: Employment (Federal)**

<https://transequality.org/know-your-rights/employment-federal>

**Occupational Safety and Health Administration, Best Practices: Guide to Restroom Access for Transgender Workers**

<https://www.osha.gov/Publications/OSHA3795.pdf>

**Transgender Law Center**

<https://transgenderlawcenter.org/resources/employment>

**Wisconsin Department of Workforce Development, Discrimination in Public Places of Accommodation or Amusement**

[https://dwd.wisconsin.gov/er/civil\\_rights/discrimination/public\\_accommodation.htm](https://dwd.wisconsin.gov/er/civil_rights/discrimination/public_accommodation.htm)

## **Resources for Students**

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**GLSEN (National)**

<https://www.glsen.org/>

**gsafe (Wisconsin)**

<https://gsafevi.org/>

**Lambda Legal Defense & Education Fund, Transgender College Students**

<https://www.lambdalegal.org/know-your-rights/article/youth-trans-college>

**National Center for Transgender Equality, Know Your Rights – Schools**

<https://transequality.org/know-your-rights/schools>

**National Center for Transgender Equality, School Action Center**

<https://transequality.org/schoolaction>