

News & Trending

PUBLICATIONS & ALERTS

H.B. 2 IS REPEALED, BUT...WHAT DOES THIS MEAN?

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North Carolina has repealed House Bill 2.^[1] In its place, the North Carolina General Assembly enacted law:

- Preempting state agencies and related entities from regulating access to multiple occupancy restrooms, showers or changing facilities (“Multiple Occupancy Restrooms”), except in accord with a state law; and
- Prohibiting local governments from enacting or amending ordinances that regulate private employment practices or public accommodations until December 2020.

AN H.B. 2 REFRESHER

H.B. 2, which was enacted in March 2016:

- Revised North Carolina’s public policy against employment discrimination to make clear that the prohibition on discrimination because of sex was limited to discrimination because of *biological sex*,
- Added a state public policy against public accommodation discrimination, but made clear that the prohibition on sex discrimination was limited to a prohibition on *biological sex* discrimination,
- Prohibited local governments from enacting laws prohibiting such discrimination or regulating certain wage and hour issues,
- Prohibited transgender persons from using public agency Multiple Occupancy Restrooms designated for the gender to which they identify, and
- Barred all people, not just LGBT persons, from bringing lawsuits for violation of the state public policy against discrimination in employment and public accommodations. The General Assembly later amended H.B. 2 to restore the right of non-LGBT persons to bring lawsuits for violation of the state public policy against discrimination in employment, although it reduced the statute of limitations for such claims from three years to one year.^[2]

EFFECT OF H.B. 2 REPEAL

With the repeal of H.B. 2, the law of North Carolina has been returned to its pre-H.B. 2 state. For example:

- In the employment law context, as before H.B. 2: (i) North Carolina’s public policy against employment discrimination once again includes a prohibition against discrimination *because of sex*, rather than H.B. 2’s prohibition on discrimination *because of biological sex*, and (ii) employees may assert claims for wrongful discharge in violation of that public policy for three years from the date of discharge.

- In the public accommodation context, as before H.B. 2, North Carolina law includes no prohibition on public accommodation discrimination.
- In the Multiple Occupancy Restrooms context, as before H.B. 2, North Carolina law does not regulate the use of Multiple Occupancy Restrooms.

At the same time, the repeal does impose some new restrictions on state agencies and related entities. Specifically:

- State agencies and related entities are preempted from regulating access to Multiple Occupancy Restrooms, leaving any such regulation in the hands of the North Carolina General Assembly. Specifically, state agencies and related entities are preempted from regulating access to Multiple Occupancy Restrooms in any way other than in accord with state laws that may be enacted in the future.
- Local governments are prohibited from enacting new laws (or amending old laws) that regulate, in any way, private employment or public accommodations until December 2020.

BOTTOM LINE FOR PRIVATE EMPLOYERS

- North Carolina law does not prohibit private sector businesses and employers from adopting policies that prohibit discrimination on the basis of sexual orientation or gender identity.^[3] This means that the state permits private sector businesses and employers to decide whether or not to adopt such policies.
- North Carolina law does not regulate private sector business and employer decisions with regard to employee or public access to Multiple Occupancy Restrooms.^[4] This means that the state permits private sector businesses and employers to decide whether to impose gender-based requirements for access to such facilities, as well as the nature of any such requirements.
- North Carolina employers will not be subject to newly enacted or amended local laws regulating employment discrimination, wages, hours and other benefits, or regulating public accommodations, until December 2020.
- North Carolina employers may be subject to local laws regulating employment discrimination, wages, hours and other benefits, or regulating public accommodations, that were in effect before H.B. 2, but the enforceability of such laws is unclear.

^[1] The repeal was the result of House Bill 142 (H.B.142) which became effective on March 30, 2017.

^[2] House Bill 169.

^[3] Private sector employers are required to comply with all applicable federal laws, including those that may be interpreted by federal agencies and courts as prohibiting discrimination because of sexual orientation or gender identity and requiring employees be allowed to use the restrooms and facilities of the gender to which they identify.

^[4] See note 3.

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