

## Steps to Ensure a Transgender Employee is Treated Lawfully in the Workplace

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Federal and state employment laws protect transgender people from discrimination and harassment in the workplace. Many employers may not know what to do if an employee tells his/her employer that he/she is transgender and will start dressing and identifying as a different gender in the workplace. It is important to take some proactive steps to make sure the employee is treated lawfully during any transition, and does not face discrimination or harassment due to any change or to his/her transgender status generally. It is also important to prepare and train the employee's co-workers for the situation.

Certain topics should be discussed with the employee to ensure he/she is not discriminated against or harassed at work, and to understand how the change will be handled. Specifically, talk to the employee about the following:

- Discuss the employee's transition process with him/her generally, so that the employer knows what to expect. The employer should not demand specific medical information, but should have a basic awareness of what changes may occur and when, in order to plan for how to respond to those changes or any questions.
- Find out if the employee will be undergoing a name change. If so, employment documents should be changed to that name when the employee so chooses. Also make sure that the employee has an opportunity to change any photo identifications required to reflect the identified gender.
- Talk to the employee about his/her preference on how and when co-workers should be informed, and what information co-workers should receive. The employee may want to minimize the number of people aware of the transition or may

want to be more open about the process. While not strictly obligated to follow the employee's requested schedule, it is advisable whenever feasible.

- The employee should be able to use the restroom of the gender with which he/she identifies. If the employee prefers a gender-neutral option, this should be provided if not an undue burden financially, but the employee should not be required to use a gender-neutral restroom unless that is the policy for all employees.
- Discuss how the employee's customers or clients should be informed, if that is advisable, or how their questions should be answered.
- Discuss expectations with the employee regarding potential conflicts and difficult conversations.
- Designate either a supervisor or a human resources professional (and a back-up) to be the employee's primary resource for any problems, concerns or complaints of harassment or discrimination.

Certain actions should be taken within the company as well to ensure the transition is as smooth as possible.

- Review current employment policies to make sure that gender identity is included as a protected category in the equal employment, non-discrimination and non-harassment policies.
- Make sure the employment policies clearly indicate that the employer welcomes all employees.
- Include transgender topics in regular (at least annually) employee training on discrimination and harassment.
- At a minimum, conduct training on transgender topics for the employee's primary supervisors. Determine if any other management employees should be included in the training.

- Ensure there is no dress code that applies certain rules to one gender but not to the other.
- Consider a joint meeting with HR, the employee's primary resource, the employee and his/her supervisors to discuss questions or concerns.
- The employee's co-workers should be informed about the gender transition to the extent feasible under all of the circumstances, with due consideration of the employee's wishes. This notice, if given, should cover the behavior the employer expects from the co-workers, as well as an update on company policy, including non-harassment and non-discrimination policies. It is recommended that the employee not be present at such a meeting so that co-workers will feel comfortable asking questions.
- Keep up with personnel paperwork if the employee decides to legally change his/her name and/or gender in the future.
- Immediately begin changing your pronoun use for the employee and require other employees to do the same.

Employment law issues, like those relating to transgender employees, should be handled in consultation with competent employment law counsel. ★

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