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LGBTQ in the Workplace

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TOPICS INCLUDE:

- Definition of terms associated with GLBTQ
- Survey of the GLBTQ laws in NRP states
- The stance of the EEOC
- MN's unique legal situation as it relates to sexual orientation and gender identity
- Transition for transgender individuals
- Sample Transgender Employment Policy



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Sexual Orientation and Gender Identity in the Workplace



Introduction

GLBTQ acronym:

- Gay
- Lesbian
- Bisexual
- Transgender
- Queer



Definition of Terms

Gay - primarily refers to a homosexual person or the trait of being homosexual.

Lesbian - A lesbian is a homosexual woman. The word lesbian is also used for women in relation to their sexual identity or sexual behavior, regardless of sexual orientation.

Bisexual - Bisexuality is romantic attraction, sexual attraction, or sexual behavior toward both males and females, or to more than one sex or gender.



Definition of Terms

Transgender - Transgender people have a gender identity or gender expression that differs from their assigned sex. Some transgender people who desire medical assistance to transition from one sex to another identify as transsexual.

Queer - is an umbrella term for sexual and gender minorities who are not heterosexual or are not cisgender.



Terms to Avoid

PROBLEMATIC	PREFERRED
<p>"transgenders," "a transgender" <i>Transgender</i> should be used as an adjective, not as a noun. Do not say, "Tony is a transgender," or "The parade included many transgenders."</p> <p>"transgendered" The adjective <i>transgender</i> should never have an extraneous "-ed" tacked onto the end. An "-ed" suffix adds unnecessary length to the word and can cause tense confusion and grammatical errors. It also brings transgender into alignment with lesbian, gay, bisexual, and queer. You would not say that Elton John is "gayed" or Ellen DeGeneres is "lesbianed," therefore you would not say Chaz Bono is "transgendered."</p>	<p>"transgender people", "a transgender person" For example, "Tony is a transgender man," or "The parade included many transgender people."</p> <p>"transgender"</p>



Terms to Avoid

PROBLEMATIC	PREFERRED
<p>"transgenderism" This is not a term commonly used by transgender people. This is a term used by anti-transgender activists to dehumanize transgender people and reduce who they are to "a condition."</p> <p>"sex change," "pre-operative," "post-operative" Referring to a "sex-change operation," or using terms such as "pre-operative" or "post-operative," inaccurately suggests that a person must have surgery in order to transition. Avoid overemphasizing surgery when discussing transgender people or the process of transition.</p>	<p>"being transgender" Refer to <i>being transgender</i> instead, or refer to <i>the transgender community</i>. You can also refer to <i>the movement for transgender equality and acceptance</i>.</p> <p>"transition"</p>



Terms to Avoid

PROBLEMATIC	PREFERRED
<p>"biologically male," "biologically female," "genetically male," "genetically female," "born a man," "born a woman"</p> <p>Problematic phrases like those above are reductive and overly-simplify a very complex subject. As mentioned above, a person's sex is determined by a number of factors - not simply genetics - and a person's biology does not "trump" a person's gender identity. Finally, people are born babies: they are not "born a man" or "born a woman."</p>	<p>"assigned male at birth," "assigned female at birth" or "designated male at birth," "designated female at birth"</p>

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Terms to Avoid

PROBLEMATIC	PREFERRED
<p>"passing" and "stealth"</p> <p>While some transgender people may use these terms among themselves, it is not appropriate to repeat them in mainstream media unless it's in a direct quote. The terms refer to a transgender person's ability to go through daily life without others making an assumption that they are transgender. However, the terms themselves are problematic because "passing" implies "passing as something you're not," while "stealth" connotes deceit. When transgender people are living as their authentic selves, and are not perceived as transgender by others, that does not make them deceptive or misleading.</p>	<p>"visibly transgender," "not visibly transgender"</p>

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Sexual Orientation vs Gender-Identity

Sex

The classification of a person as male or female. At birth, infants are assigned a sex, usually based on the appearance of their external anatomy. A person's sex, however, is actually a combination of bodily characteristics including chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics.

What is Sexual Orientation?

Describes a person's enduring physical, romantic, and/or emotional attraction to another person. Gender identity and sexual orientation are not the same. Transgender people may be straight, lesbian, gay, bisexual, or queer. For example, a person who transitions from male to female and is attracted solely to men would typically identify as a straight woman.

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Sexual Orientation vs Gender-Identity

What is Gender Identity?

- Gender identity is “the individual’s internal sense of being male or female.
- The related concept of gender expression is the way an individual expresses his or her gender identity,” which “may or may not conform to social stereotypes associated with a particular gender.” A “gender queer” individual is one who does not view themselves as having a fixed male or female identity, but instead considers their gender identity to be fluid.
- A transgender individual is one whose “gender identity . . . is different from the sex assigned to them at birth.” Thus, “someone who was assigned the male sex at birth but who identifies as female is a transgender woman. Likewise, a person assigned the female sex at birth but who identifies as male is a transgender man.” Conversely, individuals who identify with their birth gender may be referred to as cisgender.



Executive Branch’s Position

Currently, different branches of the federal government take diverging views on the subject. On one hand, the EEOC, which is charged with enforcing Title VII, now considers sexual orientation discrimination a violation of Title VII.

On the other hand, the Department of Justice has instructed other federal agencies that only sex discrimination (including gender stereotyping) is unlawful, given the Congressional omission of “sexual orientation” or “gender identity” from Title VII, unlike other laws.



The EEOC’s Position

The U.S. Equal Employment Opportunity Commission (EEOC) interprets and enforces Title VII’s prohibition of sex discrimination as forbidding any employment discrimination based on gender identity or sexual orientation. These protections apply regardless of any contrary state or local laws.

The EEOC has made protecting GLBTQ individuals from sex discrimination a national priority, and the agency has taken steps to advance GLBTQ protections in recent years.



Title VII of the Civil Rights Act

- Applies to all private sector and state/local government employers with at least 15 employees.
- Does not explicitly include sexual orientation or gender identity; however, the EEOC and courts have said that sex discrimination includes discrimination based on an applicant or employee's gender identity or sexual orientation.
- Discrimination against an individual because that person is **transgender** is, by definition, discrimination based on sex and violates Title VII.



Title VII of the Civil Rights Act

Title VII is violated where an employer denies an employee equal access to a common restroom corresponding to the employee's gender identity, or harasses an employee because of a gender transition, such as by intentionally and persistently failing to use the name and gender pronoun corresponding to the employee's gender identity as communicated to management and employees.



Title VII of the Civil Rights Act

Title VII makes it illegal for employers

- to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
- to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on sex. Title VII does not define the term "sex," and the statutory text does not refer to either sexual orientation or gender identity.



Title VII of the Civil Rights Act

Until about 10 years ago, it appeared to be settled law that sexual orientation and gender identity claims did not fall within the Act's reach. A seismic shift in that view has occurred over the past decade, and in the past two years in particular. The Equal Employment Opportunity Commission (EEOC) filed its first private sector lawsuits alleging sexual orientation discrimination, and the Seventh Circuit became the first federal circuit to conclude that sexual orientation discrimination violates Title VII (with the Second Circuit following this lead).



Sexual Orientation & Gender Identity and Expression Discrimination State Laws

State Laws:

STATE	PROTECTS AGAINST SEXUAL ORIENTATION/GENDER IDENTITY/GENDER EXPRESSION DISCRIMINATION
IOWA	Yes. Prohibits discrimination based on Sexual Orientation and Gender Identity.
MINNESOTA	Yes. Prohibits discrimination based on Sexual Orientation and Gender Identity.
NEBRASKA	No applicable provision.
NORTH DAKOTA & SOUTH DAKOTA	No applicable provision.
WISCONSIN	Yes. Prohibits discrimination based on Sexual Orientation.



Sexual Orientation & Gender Identity and Expression Discrimination City Ordinances

City Ordinances:

CITY	PROTECTS AGAINST SEXUAL ORIENTATION/GENDER IDENTITY/GENDER EXPRESSION DISCRIMINATION
Minneapolis	Yes. Prohibits discrimination based on Sexual Orientation and Gender Identity.
St. Paul	Yes. Prohibits discrimination based on Sexual Orientation and Gender Identity.



Employer Best Practices

Focus on employees' abilities to perform the job.

Regardless of the extent to which the law actually prohibits anti-GLBTQ discrimination, remember that the concept behind anti-discrimination principles is that the focus in the workplace should be on individuals' abilities to perform the jobs for which they are employed. Characteristics irrelevant to job performance should have no bearing on workplace interactions. Implementing this is typically easier for some employers with respect to sexual orientation as opposed to gender identity.



Employer Best Practices

Always use a transgender person's chosen name.

Many transgender people are able to obtain a legal name change from a court. However, some transgender people cannot afford a legal name change or are not yet old enough to legally change their name. They should be afforded the same respect for their chosen name as anyone else who uses a name other than their birth name (e.g., celebrities).

Use the pronoun that matches the person's authentic gender.

A person who identifies as a certain gender, whether or not that person has taken hormones or undergone surgery, should be referred to using the pronouns appropriate for that gender. If you are not certain which pronoun to use, ask the person, "What pronouns do you use?"



Employer Best Practices

If it is not possible to ask a transgender person which pronoun they use, use the pronoun that is consistent with the person's appearance and gender expression or use the singular they.

For example, if a person wears a dress and uses the name Susan, feminine pronouns are usually appropriate. Or it is also acceptable to use the singular they to describe someone when you don't wish to assign a gender. For example: "Every individual should be able to express their gender in a way that is comfortable for them."



Employer Best Practices

Exhibit sensitivity to transgender individuals who are transitioning.

Be sensitive to transgender individuals who are transitioning. Do not revoke a job offer based on disclosures the individual makes, as the argument that an applicant misrepresented him- or herself to the employer is usually unpersuasive. If a background check reveals different pronouns, ask the applicant respectfully whether he or she was previously known by a different name.



Employer Best Practices

My Religious or Political Beliefs Oppose Gender Transition. What About My Rights?

- **Your sincerely-held religious beliefs are legally protected.**
 - The company may not force you to change your religious beliefs.
 - The company respects diversity, including diversity of religious beliefs.
 - At work, you may express your religious beliefs so long as your expression does not impede the rights of your colleagues (for example your colleagues' right to be free from unlawful harassment and discrimination).
- **You are entitled to your own political beliefs.**
 - The company asks that all employees show respect and kindness to others even when beliefs differ!
 - This does not mean you must accept or agree with someone else's beliefs or actions.
 - The company fosters an environment in which all different types of people with all different types of beliefs can work together.



Employer Best Practices

Can I Avoid Working With Someone Going Through A Gender Transition?

- **Usually no . . .**
 - If your job requires you work with that individual, you are required to continue to satisfactorily perform your job.
 - If your sincerely-held religious beliefs prohibit you from interacting with a particular individual, please immediately advise Human Resources.
 - The company will make a decision as to whether your belief can be accommodated or whether an accommodation would result in an undue hardship for the company.



Employer Best Practices

What Bathroom / Locker Room Can A Transgender Person Use?

- **An individual may use the bathroom/locker room that corresponds with that individual's gender identity (regardless of sex assigned at birth).**
 - The company will make available a unisex single-stall restroom that can be used by any employee – transgender or non-transgender – who has a need or desire for additional privacy, regardless of the underlying reason.
 - A transgender employee may elect to use the single-stall restroom but will not be required to use it.
 - The unisex single-stall restroom may also be used by any employee that does not want to share a communal restroom with a transgender co-worker.



Employer Best Practices

My Colleague's Gender Transition Makes Me Uncomfortable and I Don't Know How to Handle It. What Should I Do?

- Demonstrate respect to everyone.
- Recognize the difference between your personal values and the community values of the workplace.
- Respect others' right to confidentiality and privacy.
- Seek support from family, friends, co-workers, and religious or community leaders.
- Reach out to the company's HR Department or Employee Assistance Program (EAP).



Employer Best Practices

Make certain that bathrooms are available to all employees.

Make bathrooms available to all employees regardless of their gender identity. The Occupational Safety & Health Administration (OSHA) recommends that, where feasible, employers should offer single-occupancy, unisex bathrooms (i.e., facilities that any one individual may use at a time) and/or multiple-occupancy, gender-neutral facilities with lockable stalls for each occupant.



Employer Best Practices

Update personnel records.

When an employee transitions during his or her employment, be sure to update personnel records accordingly. When an employee undergoes sex reassignment surgery, be sure to maintain corresponding medical records separately from the employee's personnel file in a manner that ensures confidentiality and privacy, consistent with the requirements of the Americans with Disabilities Act. Supervisors should "ensure that a **transgender** or gender non-conforming employee going through a transition period is treated with as much dignity, respect, sensitivity, and confidentiality as any other employee who experiences life challenges."



Employer Best Practices

Update EEO policies to include sexual orientation and gender identity if state or local law covers them.

If the laws of your state or locality cover sexual orientation and gender identity, ensure that EEO policies are current by listing sexual orientation and gender identity as protected traits or by inserting language that the employer does not discriminate "based on race, color, sex, religion, national origin, or any other status protected under federal, state, or local law." In addition, there is nothing unlawful about being "more protective" of GLBTQ status in your EEO policies, if the employer so desires.



Employer Best Practices

Develop training programs.

Train employees. Sometimes the most difficult interactions are not with supervisors or managers but with coworkers. Help employees understand that the protections of sexual orientation and gender identity are just as powerful as those of race, national origin, or other protected classifications.





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Managing Gender Transition in the Workplace

Introduction

The American Psychological Association (APA) says that "transgender is an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person's internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics."



Introduction

One of the transgender identities is that of transsexual – a person whose gender identity is different from his or her assigned sex. Transgender people may be straight, lesbian, gay, bisexual or asexual, and the term transgender is used to encompass a broad category of individuals.



Introduction

Although the transgender population is small, employers must still be prepared to handle workplace issues related to transgender employees. How an employer handles an employee's transition has potential legal implications, as well as an impact on the transitioning employee and his or her co-workers.



Introduction

For people transitioning from living – and working – as one gender to living and working as the other gender, no two transitions are alike. The specific steps of transition and their timing can vary, and individuals have different preferences about how widely they want their transitions to be announced.



Introduction

How employers address transgender issues depends on many factors, including organizational culture, workforce composition, the type of work, the physical layout of the workplace, and the amount of interaction the transgender employee has with peers, superiors, subordinates, vendors and clients. Because of these variables, there is no single formula for managing gender transitions at work. The process must be uniquely tailored to meet the needs of each specific situation.



Business Case

Employers that are unprepared to handle a gender transition are likely to face not only employee relations issues but also discrimination claims. Integrating transgender workers into the workplace is good for business.

For example, with transgender employees in its workplace, an organization can:



Business Case

- Attract and retain the people most qualified for particular jobs.
- Become productive, innovative and creative, because inclusiveness means an employer can draw from a broad range of talented people.
- Treat all workers fairly and judge them on their abilities, not on their gender identity or expression.
- Demonstrate compliance with federal, state, local and global employment laws.
- Fulfill diversity and inclusion initiatives.



HR's Role

Transgender employees look chiefly to HR to help them navigate the changes that are inevitable during the transition process – and to help with concerns that co-workers may express. The degree of success in a transition is strongly influenced by a person's ability to maintain a stable job and income during the process and by the level of support in the work environment.

HR can support employees undergoing gender transition and legally protect the organization by having a thorough understanding of anti-discrimination law and by keeping an eye on developing case law and proposed legislation. HR should ensure that those protections are incorporated into the organization's policies, practices, training and communication initiatives.



When is a transition “official”?

A key question HR needs to consider is when to start regarding a transitioning employee as being officially a member of his or her chosen new gender. There is no single means of defining a person’s legal gender, and there is no official point in time when a transgender person changes from one gender to the other.



When is a transition “official”?

No uniformity on this issue exists among the states, between state and federal policies or among federal agencies. For example, many states permit a transgender person to easily obtain a new driver’s license; this can help accommodate the medical requirement that a transgender person in surgical transition must live as a member of his or her new gender for at least a year before undergoing genital reconstructive surgery. In other states, changing the sex designation on any form of state-issued identification may be difficult or impossible.



When is a transition “official”?

Because the laws vary, employers should seek legal advice when addressing gender transition issues. Employers would encounter problems if they tied recognition of gender in the workplace to government agencies’ legal recognition of the person’s sex. Even more dubious is any attempt to base the person’s acknowledged gender on medical or surgical treatment milestones.



When is a transition “official”?

Here is a commonsense approach for employers:

Until a transgender person begins *working* in his or her new gender role, the person should be considered a member of his or her original sex and should be treated the same as other members of that sex. Once the employee begins to present himself or herself in the new gender role at work, the employee should be considered and treated as a member of the new sex. This approach follows the growing legal trend toward recognizing that a transgender person should be treated as a legal member of the gender in which he or she lives life.



Keeping co-workers in mind

HR may also have to deal with questions from and reactions by co-workers of the transitioning employee. Although many employees want to be supportive of an individual in transition, others may be offended by the idea of transition. Diversity in a workplace means that employees should be able to work with all people; it does not require that employees believe in or accept transgenderism. Employees are entitled to their beliefs, but they should also be required to treat the transgender person – and every other employee – with respect and tolerance.



Keeping co-workers in mind

Employers need to make clear statements in employee handbooks, rules manuals, orientation and training that all employees are welcomed and supported. Employers should also remind managers that they are responsible for following policies on transgender issues and for maintaining a harassment-free workplace.



Keeping co-workers in mind

Employers should be aware that the single most sensitive issue for co-workers of transitioning or transgender people is often the issue of bathrooms and workplace dressing rooms. Experts advise that employers should let transgender employees use the facilities designated for their chosen gender – even if other employees are uncomfortable with that. In keeping with the highly individual nature of gender transitions, the transitioning employee, HR and management can work together to determine when the employee will start using certain facilities.

See Bathroom Access Rights for Transgender Employees Under Title VII of the Civil Rights Act of 1964 (<https://www.eeoc.gov/eeoc/publications/fs-bathroom-access-transgender.cfm>).



Keeping co-workers in mind

Employers need to be familiar with state gender identity laws to ensure employee protection and maintain compliance at the state and local level. For example, California sex discrimination regulations require employers to allow employees to use facilities that correspond to the employee's gender identity or gender expression, regardless of the employee's assigned sex at birth.



Keeping co-workers in mind

HR should prepare its policies so it is ready if an employee makes a gender transition or if a new hire is a transgender person. Preparation includes first updating existing policies and procedures, then creating guidelines for handling gender transition issues. HR departments must also remember to cover these issues in employee training and communications.



Update Existing Practices

Employers should examine their current policies and practices and consider covering gender identity and gender expression in those policies. In particular, HR should see if its equal employment policies protect gender identity. Adding gender identity protection tells employees and candidates that diversity is welcome, and there is evidence that in a knowledge economy, knowledge workers are drawn to organizations that embrace diversity.



Update Existing Practices

But companies cannot just add gender identity to a policy and move on. If the organization simply rolls out a policy with no explanation or training, that leaves room for questions, particularly when a transgender employee is in the organization. Part of the policy execution process is a statement from the organization that employees must follow the policy with regard to workplace behavior and relationships even if their personal beliefs about gender identity differ.



Update Existing Practices

Following are some of the other workplace policies that HR professionals should review in light of gender transition issues:

Dress code policy. Avoid gender stereotypes, such as stating that men must wear dress trousers and women must wear skirts. Do not apply dress codes to off-duty conduct. Consider adding a provision that workers may dress in accordance with their full-time gender expression.

Benefits policies and offerings. Do not deny benefits on the basis of gender identity or expression. Treat transgender workers' spouses, domestic partners, children and step-children in accordance with applicable laws and offer the same benefits as those offered to family members of similarly situated non-transgender workers.



Update Existing Practices

Diversity and inclusion initiatives. Make certain that transgender workers are included in the organization's affinity groups, local outreach efforts, internal programming and related training.

Recruitment and selection processes. Review processes for possible disparate impact or treatment of transgender workers. Educate recruitment teams, contact outreach organizations and conduct anti-discrimination analysis as needed.



Getting started

When an employee comes forward to say he or she will undergo transition, HR should follow what author Jillian Weiss calls a four-step mediation procedure:

- **Initial employee meeting.** A time to talk to the employee about what he or she and the organization should expect through the transition process.
- **Initial management meeting.** A separate meeting with the person's supervisor to give the supervisor information about the process and to review the company's policy and procedures.



Getting started

- **Joint meeting with employee and supervisor.** A meeting to go over the transition plan and address any questions or concerns.
- **Informing co-workers.** A meeting with employees who will have regular contact with the transitioning employee to provide at least basic information about the individual's plans, along with a reminder about company policy, expected behavior and how to deal with any concerns they might have. Weiss advises that it can be helpful if the transitioning or transgender employee is *not* at this session, so that employees feel more comfortable asking questions.



What to cover

HR typically meets with the employee who is preparing to transition and discusses the situation. HR should cover the employee's preferences for handling communications with other employees and the timing of any announcement.

Some of the immediate issues to resolve include:



What to cover

- Changing the person's name and photo on company documents.
- Coverage under employer health and other benefits plans.
- Communication (and timing of those communications) to the organization.
- Security clearances.
- Restroom and dressing room use.
- Appearance rules.
- Dress code rules.
- Expectations about employee conduct and how to handle difficult conversations and potential conflict.
- Manager and employee training if needed.
- Client and customer notification and communications.



What to cover

Employers should identify someone in management or HR as a gender transition policy leader – a person tasked with knowing the rules, providing guidance, managing the timeline and making relevant decisions whenever an employee undergoes transition.



What to cover

Each transgender individual is likely to have different preferences about making the transition known at work. As the Human Rights Campaign (HRC) reports, "one employee may prefer a quick start in which all his/her co-workers and peers are informed about the transition at the end of the work week," and the employee "comes to work the following week presenting in the new/desired gender role. Another employee may prefer a more gradual transition, in which colleagues are notified of the transition, but the employee does not actually present in the new gender role for several weeks. However, in both cases, the same designated contact in human resources is responsible for helping each transitioning employee and the employee's supervisor manage the workplace transition process.



Roles for senior managers

When announcing an employee's plan to transition, senior management can send a strong message of support for the transitioning employee and set the tone for what is expected of staff.

Some employers assign an executive to sponsor the transitioning employee to help communicate top-down inclusive messages and expectations. Managers and HR should reiterate these messages regularly. The desire to minimize disruption in the office routine and to send the message that business will continue as usual should be carefully balanced with the need to educate co-workers so that the too can successfully navigate the situation.



Employee Communications

Information about the organization's policies and guidelines for managing a gender transition should be widely accessible for employees, supervisors and managers, and HR professionals. The HRC's Workplace Gender Transition Guidelines recommends that information appear in various venues, including:

- The organization's intranet, particularly the HR resources pages and any pages for gay, lesbian, bisexual, transgender and queer (GLBTQ) employee groups.
- The company's online and print code of conduct documents, covering employment non-discrimination, equal employment opportunity policy, dress code, restroom policy and other topics.



Employee Communications

- The search engine used to navigate company sites and pages. Users should be able to find information by searching terms such as transition guidelines, gender identity, gender expression, transgender, transsexual, cross-dress, gender reassignment, sex reassignment, sex change or transgendered. (The terms sex change and transgendered are not preferred terminology, but are intended to capture potential searches).
- Employee assistance program resources.
- HR hotline resources.





Model Transgender Employment Policy



Introduction

This model policy and guide will clarify the law and help your company welcome and include transgender, gender non-conforming, and transitioning employees.

Below is a sample policy that your company can use as the basis for creating your own inclusive policy to ensure transgender, gender non-conforming, and transitioning employees feel safe and welcome in your workplace.



Model Transgender Employment Policy

Purpose

Our company does not discriminate in any way on the basis of sex, sexual orientation, gender identity, or gender expression. This policy is designed to create a safe and productive workplace environment for all employees.



Model Transgender Employment Policy

Purpose (cont.)

This policy sets forth guidelines to address the needs of transgender and gender non-conforming employees and clarifies how the law should be implemented in situations where questions may arise about how to protect the legal rights or safety of such employees. This policy does not anticipate every situation that might occur with respect to transgender or gender non-conforming employees, and the needs of each transgender or gender non-conforming employee must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety, comfort, and healthy development of transgender or gender non-conforming employees while maximizing the employee's workplace integration and minimizing stigmatization of the employee.



Model Transgender Employment Policy

Definitions

The definitions provided here are not intended to label employees but rather to assist in understanding this policy and the legal obligations of employers. Employees may or may not use these terms to describe themselves.



Model Transgender Employment Policy

Gender identity. A person's internal, deeply-felt sense of being male, female, or something other or in-between, regardless of the sex they were assigned at birth. Everyone has a gender identity.

Gender expression. An individual's characteristics and behaviors (such as appearance, dress, mannerisms, speech patterns, and social interactions) that may be perceived as masculine or feminine.



Model Transgender Employment Policy

Transgender. An umbrella term that can be used to describe people whose gender identity and/or expression is different from their sex assigned at birth.

- A person whose sex assigned at birth was female but who identifies as male is a transgender man (also known as female-to-male transgender person, or FTM).
- A person whose sex assigned at birth was male but who identifies as female is a transgender woman (also known as male-to-female transgender person, or MTF).
- Some people described by this definition don't consider themselves transgender – they may use other words, or may identify simply as a man or woman. A person does not need to identify as transgender in order for an employer's nondiscrimination policies to apply to them.



Model Transgender Employment Policy

Gender non-conforming. This term describes people who have, or are perceived to have, gender characteristics and/or behaviors that do not conform to traditional or societal expectations. Keep in mind that these expectations can vary across cultures and have changed over time.



Model Transgender Employment Policy

Transition. The process of changing one's gender from the sex assigned at birth to one's gender identity. There are many different ways to transition. For some people, it is a complex process that takes place over a long period of time, while for others it is a one- or two-step process that happens more quickly. Transition may include "coming out" (telling family, friends, and coworkers); changing the name and/or sex on legal documents; and, for many transgender people, accessing medical treatment such as hormones and surgery.



Model Transgender Employment Policy

Sexual orientation. A person's physical or emotional attraction to people of the same and/or other gender. Straight, gay, and bisexual are some ways to describe sexual orientation. It is important to note that sexual orientation is distinct from gender identity and expression. Transgender people can be gay, lesbian, bisexual, or straight, just like non-transgender people.

GLBTQ. A common abbreviation that refers to the gay, lesbian, bisexual, transgender and queer community.



Model Transgender Employment Policy

EVERYONE HAS A ...

- Sex Assigned at Birth*
- Gender Identity*
- Gender Expression*
- Sexual Orientation*



Model Transgender Employment Policy

Privacy

Transgender employees have the right to discuss their gender identity or expression openly, or to keep that information private. The transgender employee gets to decide when, with whom, and how much to share their private information. Information about an employee's transgender status (such as the sex they were assigned at birth) can constitute confidential medical information under privacy laws like HIPAA.

Management, human resources staff, or coworkers should not disclose information that may reveal an employee's transgender status or gender non-conforming presentation to others. That kind of personal or confidential information may only be shared with the transgender employee's consent and with coworkers who truly need to know to do their jobs.



Model Transgender Employment Policy

Official Records

Our company will change an employee's official record to reflect a change in name or gender upon request from the employee. Certain types of records, like those relating to payroll and retirement accounts, may require a legal name change before the person's name can be changed. Most records, however, can be changed to reflect a person's preferred name without proof of a legal name change.

A transgender employee has the right to be addressed by the name and pronoun corresponding to the employee's gender identity. Official records will also be changed to reflect the employee's new name and gender upon the employee's request.



Model Transgender Employment Policy

Official Records (cont.)

As quickly as possible, we will make every effort to update any photographs at the transitioning employee's workplace so the transitioning employee's gender identity and expression are represented accurately.

If a new or transitioning employee has questions about company records or ID documents, the employee should contact _____.



Model Transgender Employment Policy

Names / Pronouns

An employee has the right to be addressed by the name and pronoun that correspond to the employee's gender identity, upon request. A court-ordered name or gender change is not required. The intentional or persistent refusal to respect an employee's gender identity (for example, intentionally referring to the employee by a name or pronoun that does not correspond to the employee's gender identity) can constitute harassment and is a violation of this policy. If you are unsure what pronoun a transitioning coworker might prefer, you can politely ask your coworker how they would like to be addressed.



Model Transgender Employment Policy

Transitioning on the Job

Employees who transition on the job can expect the support of management and human resources staff. HR will work with each transitioning employee individually to ensure a successful workplace transition. Insert specific guidelines appropriate to your organizational structure here, making sure they address:

- Who is charged with helping a transitioning employee manage his/her workplace transition,
- What a transitioning employee can expect from management,



Model Transgender Employment Policy

Transitioning on the Job (cont.)

- What management's expectations are for staff, transitioning employees, and any existing gay, lesbian, bisexual, transgender and queer (GLBTQ) employee resource group in facilitating a successful workplace transition, and,
- What the general procedure is for implementing transition-related workplace changes, such as adjusting personnel and administrative records, and developing an individualized communication plan to share the news with coworkers and clients.



Model Transgender Employment Policy

Sex-segregated Job Assignments

For sex-segregated jobs, transgender employees will be classified and assigned in a manner consistent with their gender identity, not their sex assigned at birth.



Model Transgender Employment Policy

Restroom Accessibility

Employees shall have access to the restroom corresponding to their gender identity. Any employee who has a need or desire for increased privacy, regardless of the underlying reason, will be provided access to a single-stall restroom, when available. No employee, however, shall be required to use such a restroom. All employees have a right to safe and appropriate restroom facilities, including the right to use a restroom that corresponds to the employee's gender identity, regardless of the employee's sex assigned at birth. That is, transgender women must be permitted to use the women's restroom, and transgender men must be permitted to use the men's restroom. That decision should be left to the transgender employee to determine the most appropriate and safest option for them.



Model Transgender Employment Policy

Restroom Accessibility (cont.)

Some employees – transgender or non-transgender – may desire additional privacy. Where possible, an employer will make available a unisex single-stall restroom that can be used by any employee who has a need for increased privacy, regardless of the underlying reason. For example, if any employee does not want to share a multi-person restroom with a transgender coworker, they can make use of this kind of option, if available.



Model Transgender Employment Policy

Locker Room Accessibility

All employees have the right to use the locker room that corresponds to their gender identity. Any employee who has a need or desire for increased privacy, regardless of the underlying reason, can be provided with a reasonable alternative changing area such as the use of a private area, or using the locker room that corresponds to their gender identity before or after other employees). Any alternative arrangement for a transgender employee will be provided in a way that allows the employee to keep their transgender status confidential.



Model Transgender Employment Policy

Dress Codes

Our company does not have dress codes that restrict employees' clothing or appearance on the basis of gender. Transgender and gender non-conforming employees have the right to comply with company dress codes in a manner consistent with their gender identity or gender expression.



Model Transgender Employment Policy

Discrimination / Harassment

It is unlawful and violates company policy to discriminate in any way (including, but not limited to, failure to hire, failure to promote, or unlawful termination) against an employee because of the employee's actual or perceived gender identity. Additionally it also is unlawful and contrary to this policy to retaliate against any person objecting to, or supporting enforcement of legal protections against, gender identity discrimination in employment.



Model Transgender Employment Policy

Discrimination / Harassment (cont.)

Our company is committed to creating a safe work environment for transgender and gender non-conforming employees. Any incident of discrimination, harassment, or violence based on gender identity or expression will be given immediate and effective attention, including, but not limited to, investigating the incident, taking suitable corrective action, and providing employees and staff with appropriate resources.



Model Transgender Employment Policy

Health Insurance Benefits

Our company will only enter into health insurance contracts that include coverage for transition-related care.



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