



Model Transgender Employment Policy
negotiating for inclusive workplaces



Transgender Law Center

Making Authentic Lives Possible

Model Transgender Employment Policy

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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 policy¹ 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.

Sample Policies

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.

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.

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.

- » **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.

1. This model policy is based on a number of existing policies including those adopted by major employers like Ernst & Young, Chevron, and the federal Office of Personnel Management, see <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/>, as well as guidelines and model policies created by the California Safe Schools Coalition, <http://www.casafeschools.org/csscmodelpolicy1209.pdf>; San Francisco, <http://www.sf-hrc.org/index.aspx?page=29>; and the Human Rights Campaign, <http://www.hrc.org/resources/entry/workplace-gender-transition-guidelines>.

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- » **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.
- » **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.
- » **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.
- » **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.
- » **LGBT:** A common abbreviation that refers to the lesbian, gay, bisexual, and transgender community.

EVERYONE HAS A ...

Sex Assigned at Birth

Gender Identity

Gender Expression

Sexual Orientation

Specific Policies

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.

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.

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 _____.

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.

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,

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- » What management's expectations are for staff, transitioning employees, and any existing lesbian, gay, bisexual, transgender (LGBT) 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.

A sample transition plan is attached at the end of this document.

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.

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.

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.

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.

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.

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.

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.

Health Insurance Benefits

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

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Sample Workplace Transition Plan

This sample Workplace Transition Plan addresses some of the processes that may occur at your company during an employee transition. This sample plan should be customized to fit your company's staffing structure and procedures, and should be modified individually with each transitioning employee to meet their individual needs.

Before the Workplace Transition Begins:

1. The transitioning employee should get together with their selected first point of contact to make them aware of the employee's upcoming transition.
2. If the point of contact is not in HR, then the transitioning employee should be referred to HR. Make sure the employee knows about the company's transgender-related policies and the availability of transition-related health care benefits.
3. Next, if the transitioning employee's supervisor was not the first point of contact, a meeting between the transitioning employee and the employee's supervisor – and others, if desired by the transitioning employee – should be scheduled to ensure the supervisor knows of the employee's planned transition. Note: Management beyond the transitioning employee's supervisor should be made aware of the employee's planned transition so that leaders can express their support when the employee's transition is made known to the employee's work team.
4. The transitioning employee and their initial point person should meet to discuss all of the individuals who will need to be included in the workplace transition plan. This should include the employee, the employee's immediate supervisor, and someone from HR. It can also be useful to include a representative from the company's LGBT employee resource group. All members of this transition team should familiarize themselves with the company's policies and any other relevant resources that provide educational information about transgender issues.
Keep in mind that a timeframe would be helpful for when each person needs to become involved in the employee's transition process, as it is likely not all individuals of the transition team need to be brought on board at once.
Also recognize that certain stages of the workplace transition process will require more lead time than others. Set a timeline that attempts to realistically and accurately predict how long each step should take.
5. Create the Workplace Transition Plan. Make sure it addresses all of the following areas:
 - i. The date when the transition will officially and formally occur. This means the date that the employee will change their gender expression, name, and pronouns. The transitioning employee may choose to begin using the restroom and locker room associated with their gender identity on this date as well. The transitioning employee will know best when this should occur as they will be able to determine all relevant factors to be considered when choosing this date.
 - ii. Decide how, and in what format, the transitioning employee's co-workers should be made aware of the employee's transition. It is up to the transitioning employee to decide if they would like to make some co-workers aware of their transition on a one-on-one basis before it is officially announced.
 - iii. Decide what, if any, training will be given to co-workers.
 - iv. Determine what updates should be made to the transitioning employee's records, and when they will be made.
 - v. Determine dates of any leave that may be needed for pre-scheduled medical procedures.

6. Ensure that all name changes and photographs are updated in advance so that they can go live on the transition day. This includes email addresses. Make sure to keep in mind that name changes within certain processes could take longer than in others. Figure this into your Transition Plan timeline.

The Day the Transition Will Be Made Known to the Work Team:

1. Have a work team transition meeting that includes the transitioning employee, the employee's supervisor, the employee's co-workers, and any other team or regional leadership if they are able to attend live. Otherwise, remote conference any members of the transition team or the employee's work team that cannot be there live. It's important to have this meeting in person if at all possible. If the employee thinks it would be helpful, a handout about transgender issues can be provided at this meeting. It is up to the employee whether they feel comfortable attending or would prefer not to be there.
2. The head of the employee's work team should announce the transition, along with any other high level management who are there in order to show solidarity for the transitioning employee. The speaking supervisor must:
 - i. Emphasize the transitioning employee's importance at the company and the management's complete support of the employee's transition.
 - ii. Review the company's relevant nondiscrimination policies.
 - iii. Indicate that the transitioning employee will be presenting themselves in accordance with their gender identity and this should be respected. The manager should also advise co-workers about the transitioning employee's new name and preferred pronoun.
 - iv. Be a behavioral model by using the transitioning employee's new name and pronoun in all communication – written and oral, formal and informal.
 - v. Make a point that the transition will not change the workplace and that everything should go on as it did previously.
 - vi. Solicit any questions. Refer questions the manager cannot answer to HR.
 - vii. If training is going to occur, the date should be announced at this meeting. If possible, the training should occur before the date of the employee's official workplace transition.

The First Day of the Employee's Official Workplace Transition:

The transitioning employee's supervisor should be clear that all elements are in place, in the same way the supervisor would for a new hire or transferred employee. These elements include:

1. Making sure that the transitioning employee has a new ID badge and photo if necessary.
2. Ensuring all work documents have the appropriate name and gender and checking that these have been changed in all of the places an employee's name may appear.