Gender Identity Non-Discrimination Best Practices



Employers must recognize the gender employees live not the gender they were born to.

People who are transgender, or gender non-conforming, remain a common target for workplace discrimination, harassment and even violence, even though gender expression and identity are protected grounds under human rights laws. **Cardinal Rule:** Every person has the right to define their own gender identity and employers must recognize and treat trans people as the gender they live, regardless of their gender assigned at birth and whether or not they've undergone surgery. So, it's crucial to have a clear gender expression and identity anti-discrimination policy addressing how these principles apply to different aspects of workplace activity ranging from HR recordkeeping to restroom access. Here's a checklist of best practices on which to base your policy based on guidance from the Ontario Human Rights Commission.

Defining Our Terms

Although you should avoid labels, there are some terms you must understand to protect transgender people:

Gender expression is how a person publicly presents their gender, including via behaviour, outward appearance such as dress, hair, make-up, body language, voice and chosen name.

Gender identity is a person's internal and individual experience of gender, or sense of being a woman, man, both, neither or anywhere along the gender spectrum, which may be different from their birth-assigned sex.

Gender non-conforming refers to individuals who have, or are perceived to have, gender characteristics and/or behaviours that don't conform to traditional or societal expectations.

Trans or transgender is an umbrella term referring to people whose gender identity and/or expression is different from their sex assigned at birth.

Sexual orientation means a person's physical or emotional attraction to people of the same and/or other gender, which may be described by terms like straight, gay and bisexual.

Privacy & Confidentiality, General

☐ Maximize privacy and confidentiality of any information related to an employee's gender identity if the employee wishes, including information that directly or indirectly identifies that a person's sex is different from their gender identity.

☐ Keep a person's transgender history and medical information private and confidential.

☐ Limit collection, use and disclosure of the above to relevant information and people directly involved in helping to meet the person's needs.

☐ Keep the above information exclusively with designated personnel, such as an HR manager, in a secure filing system to protect the person's confidentiality.

Identification Documentation & Records

☐ Recognize a trans person's preferred name and gender in all administrative systems and documents, including hard copies and electronic.

☐ Show how any requirement for a person's "legal" name and gender is legitimate, i.e., reasonable and bona fide in the circumstances.

☐ Perform system reviews to identify how electronic databases, IT systems and other relevant information processes can be modified to recognize a person's chosen name and gender when it doesn't match legal documents.

Collecting Data on Sex & Gender

☐ Consider whether there's a legitimate need to ask for and collect information about sex/gender.

☐ If yes, provide options beyond the binary of male/female or man/woman.

☐ To the greatest extent possible, allow people to self-identify their sex or gender identity—the option of a blank box is generally deemed the most inclusive.

☐ Protect any information indicating transgender status as confidential.

Dress Code Policies

☐ Don't base dress codes on gender stereotypes.

☐ Make dress codes inclusive of trans people, and clearly state that everyone may dress in accordance with their lived gender identity or gender expression.

☐ Apply dress codes consistently to all people, regardless of their gender identity or expression.

Bathrooms & Changing Rooms Access

☐ Recognize the right of trans people to access facilities based on their lived gender identity.

☐ Clearly communicate that a trans person will not be required to use a separate facility because of the preferences or negative attitudes of others.

☐ Make it clear that accommodation options will be provided on an individualized basis, if a trans person requests.

☐ Provide privacy options that anyone in a change room may use.

☐ Provide information on where people can find accessible, all-gender washrooms.

Organizational Gender Transition Guidelines

☐ Establish guidelines for supporting employees who are transitioning before employees come forward to seek support.

☐Ensure guidelines provide clear direction for managers on how to generally help transitioning employees, while still recognizing the obligation to take the individual's needs into account.

☐ Ensure guidelines address:

- The lead contact person for assisting the transitioning employee;
- What a transitioning employee can expect from management;
- Expectations of management and other staff, transitioning employees in facilitating a successful workplace transition; and
- Related policies and practices for assisting with the transition process, such as: washroom policies, dress code policies, confidentiality and privacy, recognizing the person's new name in documentation and records, anti-harassment policies, dealing with any individual accommodation needs as well as training for management, staff and clients.

☐ Establish and implement an individualized workplace transition plan for employees in transition.

Names & Pronouns

☐ State that all employees have the right to be addressed by the name and pronoun that correspond to the employee's gender identity, upon request, without a court-ordered name or gender change.

☐ Make it clear that intentional, persistent or unreasonable refusal to respect an employee's gender identity, such as by using a "his" or "her" pronoun that doesn't correspond to the employee's gender identity, may constitute harassment and grounds for discipline.

Sex-Segregated Job Assignments

☐Classify and assign sex-segregated jobs for transgender employees in a manner consistent with their gender identity, not their sex assigned at birth.

Individualized gender transition accommodation plan

- Working together, the employee, employer and union representatives (where the employee has asked for their involvement) may wish to create a transition plan to address what, if any, accommodations may be needed in the workplace related to the steps the employee is taking in the transition process.
- Each trans person's situation will vary, and an individualized transition plan will make clear what steps will be taken given the needs of the particular employee.
- It can be useful to discuss timelines and dates when the employee would like to:

- Be addressed by their new name and new pronoun
- Begin expressing their gender identity through clothing, in keeping with the workplace dress code
- Use washroom and other facilities in their lived gender identity
- Able to take time off work for any medical treatments related to their transition, if needed.
- The plan should also address:
- When and how any related employment records, documents and databases will be updated to reflect the person’s new name and gender (e.g. human resources and administrative records, email and phone directories, business cards, etc.)
- If, when and how other employees and clients will be informed of the person’s new name and gender identity
- Anti-harassment planning – a simplified process to deal quickly and effectively with any harassment the transitioning employee may experience
- When and how training for other employees, clients or managers will be provided to help them understand the transition process, if appropriate
- How management and the union will show support for the transitioning employee.