

Understanding Gender Identity and Gender Expression Rights



Gender Identity and Gender Expression are protected human rights, is your organization prepared to protect them?

The Ontario Human Rights Commission has published a new comprehensive guide titled 'Policy on preventing discrimination because of Gender Identity and Gender Expression.'

Gender identity and gender expression are protected rights under the Ontario Human Rights Code. This new guide is designed to help organizations understand the bias and prejudice faced by individuals whose gender identity and gender expression are not well understood. The policy includes information on forms of discrimination, the duty to accommodate, and preventing and responding to discrimination.

According to the guide, the goal of the policy is to:

- *Promote recognition of the inherent dignity and worth of trans people*
- *Provide for equal rights and opportunities without discrimination and harassment because of gender identity and gender expression*
- *Create a climate of understanding and mutual respect, so that trans people feel they belong in the community and can contribute to it.*

Across Canada, legislation in Manitoba and the Northwest Territories also includes gender identity as a protected ground. Nova Scotia's legislation includes both "gender identity" and "gender expression." In other jurisdictions, gender identity is usually addressed under the protected ground of "sex."

Rights to Self-Identified Gender

One of the key protected rights of people who identify as Transgender is the right to self-identify gender. The implications within the workplace include

providing the right to be publicly identified by the gender of choice or the 'lived gender' and not the gender assigned at birth, including dress, referencing names and titles, and self-identifying on forms.

Keeping an Eye Out for Workplace Gender-Based Harassment

Gender based harassment occurs frequently in the workplace. Many organizations have learned to identify gender discrimination and harassment with regards to gender-based language that is derogatory or insulting to women. However, gender based harassment also occurs with reference to gender identity. Examples of gender-based harassment include:

- Overt comments derogatory to people in the trans community in general or a specific individual, including comments or jokes that point out a person is not living or conforming to their 'proper' (assigned) gender identity
- Comments intended to demean, ridicule, and humiliate people because of their gender identity or expression
- Behaviour, policies, or language that reinforce only traditional and heterosexual gender as 'normal', 'natural,' or 'preferred'
- Refusing to allow an individual to select the pronouns or names that reflect their self-identified or lived gender
- Spreading rumors and comments that question an individual's gender or contradict their lived or self-identified gender
- Commenting on, questioning, or insulting their physical appearance as unnatural, comments on the inappropriateness of clothing, mannerisms, and other forms of identity.

Gender Identity Accommodation

Gender identity accommodation requirements and expectations continue to evolve. There are still areas that remain to be clearly defined. At the extreme end, people may question the ability of a person to participate in sports or recreational activities intended for only one gender. For example, a person who is male by gender assignment and female by gender identity who wants to participate on a women's college swim team raises interesting challenges and questions. However, for the most part, lived gender can be feasibly accommodated in the workplace when you understand and accept that the lived gender of the person is the person's gender.

Gain a Better Understanding

Recently at a TED Vancouver talk, successful fashion model Geena Rocero shared her experience as a transgendered individual. Living and working as a fashion model, she had not previously shared her story of being assigned the identity of a male at birth but living the life of a female. In this TED talk 'Geena Rocero: Why I Must Come Out,' Geena provides an informative perspective that may be useful in understanding the issue of gender identity further.

Inclusion and respecting human rights are important issues in Canada. Canadians are generally protective of our identities as accepting and welcoming people, but may not be comfortable relating to what we do not understand. Exposing your employees to information, ideas, and people's stories can enable your employees to make choices and take actions that are inclusive and not judgmental. The act of not forcing an individual to select male/female on a form, allowing

individuals to select attire that is appropriate for the workplace based on lived gender identity are small steps in the process.

Accommodation for transgender individuals very often has no or little cost and is frequently a matter of awareness and a willingness to change. To help facilitate this process, HR should take the time to understand the issue and ensure that others within the organization are aware of and understand the often hidden and subtle aspects of Gender Identity and Gender Expression discrimination in the workplace.

Resources

Model Policy on Transgender Sexual Preference Discrimination

Toby's Law in Ontario Bans Gender Identity Discrimination