

# Workplace Gender Identity and Transition guidelines

For transgender employees, managers and human resource professionals

## Introduction

For the majority of people their innate sense of being male or female - their gender identity - matches their birth sex and they do not have any questions over their gender identity. However, there are a small number of people whose gender identity does not match the gender they were assigned at birth. These are transgender people. Many will undergo the process of aligning their life and physical identity to match their gender identity, and this is called transitioning.

Individuals will always view themselves and their experience in a unique way, and will have personal preferences in terms of the language that their employers use, but we use the umbrella term “transgender” in this guidance, which includes non-binary.

People can change gender without any medical intervention. Medical processes are not essential to transitioning. Some people choose not to, or cannot, undergo a medical process but are still trans.

This guidance is designed to provide employers with advice on the recruitment and retention of trans employees and potential employees.

Those employers who understand the business and service benefits of a diverse and engaged workforce will recognise the need to respond to the differing needs of all their staff. They will understand the importance of affording everyone dignity and of making people feel included so that each individual adds value and can fulfill their potential without fear of discrimination.

However, there is sometimes a lack of awareness and understanding in relation to gender identity which sometimes results in employers failing to support staff effectively; often they lack the knowledge and the confidence to do so. Because only a small proportion of the population is trans, employers may never have needed to consider these issues.

The recruitment and retention of trans employees in the workforce need not be a complex process for employers.

Employers need only exercise a good approach to business practices. This guide provides some additional practical advice and clarification about how the law applies in Ireland.

To support employers to be trans-friendly, this practical guide is for:

- anyone in an organisation who wants to build their awareness and knowledge of trans issues; and
- it may be of specific interest to strategic and operational managers, directors, recruiters, human resource teams, trade unions, staff support networks and staff. We hope that this guide enables employers to respond fully and confidently to specific issues that impact on trans people, be they employees or potential employees.

## **The business or strategic case for being trans inclusive**

We are all different. Our different backgrounds, experience and perspectives mean we think about issues in different ways, see new solutions and opportunities to improve. The opportunity to think differently means we can do things differently.

These diverse skills are important for employers in all sectors; for private sector employers seeking commercial advantage and for public sector employers who need to deliver the best possible service to citizens.

We know that there is a wealth of research to show that workplaces that are more inclusive are also more productive.

When people feel valued by their employer for the contribution they can make to the organisation as an individual, regardless of their personal (or protected) characteristics, they are more likely to:

- Feel engaged and enthusiastic;
- Go the extra mile and expend discretionary effort;
- Have better attendance;
- Be a better team member;
- Stay longer and offer loyalty; and
- Talk about their employer in positive terms.

“My employer treated me as an individual, they listened and provided support. Although they didn’t always get everything right, I know that they tried hard and as a result benefit hugely from having an extremely loyal employee.” If barriers exist to the recruitment and retention of transgender staff, employers miss out on this potential. We know that trans people often leave their jobs before transitioning and often take lower paid jobs when they return to the workplace, often because of the possible discrimination they imagine they will face if they stay in their place of work. This can result in a loss of expertise and investment for their original employer. A more inclusive environment would retain the skills and expertise of that employee.

Being trans inclusive is the law. Trans people are protected in Irish law under the Employment Equality and Equal Status through case law. The Gender Recognition Act 2016 provides a legal process for trans people to have their identified gender recognised legally.

## **The Gender Recognition Act**

On 4 September 2015 the [Gender Recognition Act 2015](#) came into effect and provides for the legal recognition of a person’s preferred gender.

Applicants make a statutory declaration declaring that “he or she has a settled and solemn intention of living in the preferred gender for the rest of his or her life”.

Gender recognition does not require an applicant to furnish any medical certification or have commenced any medical intervention.

## Gender transition guidelines

Just as there are gay, lesbian and bisexual employees at [COMPANY], there are also employees who are transgender. Some are out — i.e., open about their gender identity or expression — and others may not be.

Transgender or ‘trans’ people are protected in Irish law under the Employment Equality and Equal Status through case law. In 2016 the Gender Recognition Act provides a legal process for trans people to have their identified gender recognised legally.

However, given that many transitioning employees must come out to their employers in order to live consistently with one's gender identity full-time, employers necessarily become involved in an employee's transition.

These gender transition guidelines were created to help foster dialogue and understanding of transgender issues in the workplace.

They include recommendations for employees, managers and Human Resources on how to provide a welcoming and supportive environment for employees undergoing transition at [COMPANY].

If you have questions concerning your rights or responsibilities as an employee or manager, please contact Human Resources.

### Overview

[COMPANY] includes ["gender identity" / "gender identity and expression"] in its equal employment opportunity policies to clarify that discrimination against transgender individuals is prohibited. This policy is consistent with our workplace philosophy that all employees should be treated fairly and with respect.

["Gender identity" / "Gender identity and expression "] is included in the list of characteristics that are protected under the following [COMPANY] policies and documents prohibiting discrimination: [Dignity at Work, Equality Policy, Diversity Policy, Equal Employment Opportunity, Affirmative Action, Non- Discrimination, Anti-Harassment, Sexual Harassment, Confidentiality, etc.] [Insert relevant policy here]

An employee's failure to comply with the above policies could result in corrective action, including termination of his or her employment.

## Definitions

### Transgender

Transgender people are individuals whose gender identity and/or gender expression differs from the sex they were assigned at birth. Transgender is an umbrella term that includes people of different gender identities and gender presentations and includes people who are transsexual, cross-dressers or otherwise gender non-conforming.

Many transgender people wish to live as a member of the gender with which they identify and this may involve changing names, hormone therapy or surgery. The process is referred to as 'transition' (see below). Not all trans people wish to transition. Some people do not identify as either male or female; some identify as both.

The term 'trans' can generally be used as shorthand.

### Gender identity

Gender identity refers to a person's innate, deeply felt psychological identification as male or female, which may or may not correspond to the person's body or designated sex at birth (meaning what sex was originally listed on a person's birth certificate). Gender identity is distinct from the term "sexual orientation." Transgender people may identify as straight, gay, lesbian or bisexual.

### Gender dysphoria

Gender dysphoria refers to people whose gender at birth is contrary to the one they identify with. This term is recognized by the American Psychiatric Association.<sup>A</sup> For a person to be diagnosed with gender dysphoria, there must be a marked difference between the individual's expressed/experienced gender and the gender others would assign him or her, and it must continue for at least six months.

This condition can cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Gender dysphoria is manifested in a variety of ways, including strong desires to be treated as the other gender or to be rid of one's sex characteristics, or a strong conviction that one has feelings and reactions typical of the other gender.

### Gender expression

Gender expression refers to all of the external characteristics and behaviours that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine or neutral in one culture may not be assessed similarly in another.

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<sup>A</sup> American Psychiatric Publishing: <http://www.dsm5.org/Documents/Gender%20Dysphoria%20Fact%20Sheet.pdf>

## **Transitioning**

Transitioning is a process through which some transgender people begin to live as the gender with which they identify, rather than the one assigned at birth. Transition might include social, physical or legal changes such as coming out to family, friends, co-workers and others; changing one's appearance; changing one's name, pronoun and sex designation on legal documents (e.g. driving license or passport); and medical intervention (e.g. through hormones or surgery).

A medical transition may include hormone therapy, sex-reassignment surgery and/or other components and is generally conducted under medical supervision based on a set of standards developed by medical professionals.

## **Transsexual**

A Transsexual person identifies as 'opposite' to the sex assigned to them at birth. The term connotes a binary view of gender, moving from one polar identity to the other. The term 'transsexual' is contentious. Historically the term was used to describe a transgender person who has had gender reassignment surgery. However many trans people reject the term, given it can be incorrectly interpreted as focusing on sexuality or sexual behaviour rather than "gender identity"

## **Cross-dresser**

A cross-dresser wears the clothing and/or accoutrements, such as makeup and accessories that are considered by society to correspond to the "opposite sex." Cross-dressers (also known as transvestites) typically do not seek to change their physical characteristics and/or manner of expression permanently or desire to live full-time as the opposite gender. Employees who cross-dress some of the time may fear that discovery of their cross-dressing, even when on personal time, may lead to discrimination or harassment at work. While cross-dressing off-duty is not related to an employee's job performance, a person who cross-dresses off-duty is still protected by our EEO policy prohibiting discrimination or harassment based on *[gender identity / gender identity and expression]*.

## **Sexual orientation**

"Sexual orientation" is the preferred term used when referring to an individual's physical and/or emotional attraction to the same and/or opposite gender. "Heterosexual," "bisexual" and "homosexual" are all sexual orientations. A person's sexual orientation is distinct from a person's gender identity and expression.

## **Gender fluid**

Gender Fluid is a non-binary gender identity. Gender fluid individuals experience different gender identities at different times. A gender fluid person's gender identity can be multiple genders at once, then switch to none at all, or move between single gender identities. Some gender fluid people regularly move between only a few specific genders, perhaps as few as two.

## **Guidelines for Employees**

If you are a transgender employee, you have the right to be who you are openly. This includes expressing your gender identity without fear of consequences. When an employee transitions, it means a change for the workplace. The transgender employee, co-workers and management need to respond, accept and adapt to the change.

It is vital to provide a welcoming and supportive environment for employees who want to transition at work. Transitions are often highly individual and there is no singular way to transition on job.

### **Notification of Transition**

An employee beginning the transition process should contact his or her immediate supervisor and Human Resources and be prepared to speak about his or her intentions, needs and concerns. Contact should be made by the employee well ahead of the employee's planned transition date. If an employee needs assistance in order to make these contacts, the employee should contact Human Resources at *[phone/e-mail]*.

If the initial contact is made with Human Resources, it is important at some point that the employee's immediate supervisor becomes part of his or her support team.

Transitioning employees should be prepared to help educate their manager, Human Resources and others in order to understand clearly what their needs may be.

Internal and external resources to assist transitioning employees in this educational effort are listed at the end of this document.

### **Appearance Standards**

*[COMPANY]* has the right to regulate employee appearance and behaviour in the workplace for reasonable business purposes. A transgender employee is permitted to dress consistently with his or her gender identity and is required to comply with the same standards of dress and appearance as apply to all other employees in their workplace and similar position. The decision as to when and how an individual expresses their gender identity remains the employee's choice.

**Customer Contact Employees:** As with all employees, transgender employees with customer contact responsibilities are held to the same appearance standards as other employees.

Customer preference does not justify denying an employee the right to dress consistently with his or her gender identity.

*[COMPANY]*'s commitment to maintaining a positive work environment and to conducting business in a positive, professional manner will be communicated to customers by consistently displaying our Equal Employment Opportunity statement.

### **Restroom Access**

Access issues related to restrooms and other sex-segregated facilities (e.g., locker rooms) will be handled with sensitivity not only to *[COMPANY]*'s obligation to provide transitioning employees with the same level of facilities access available to all other employees, but also to the responses of co-workers and the comfort of the employee. Transgender employees will be permitted to use the facilities that correspond to their gender identity. However, usage of reasonable single-occupancy or unisex facilities may be considered for a temporary period during the employee's transition process or on an ongoing basis dependant on consultation with the employee.

A transitioning employee will not be required to use the restroom of his or her designated sex at birth after he or she has begun transitioning.

**Additional Recommendation:** [COMPANY] will consider feasibility of single-occupancy or unisex restrooms in future office facilities.

### **Health Benefits for Transgender Employees**

Transgender employees of [COMPANY] are eligible for and not excluded from the following health benefits commonly associated with the transition process: *[mental health counseling, hormone replacement therapy, medical visits to monitor hormone therapy, sex-reassignment surgery, short-term disability leave, other]*.

### **Right to Privacy**

[COMPANY] is committed to respecting the right to privacy. All information disclosed relating to a person's gender identity and expression will be treated as confidential. Confidential information will only be disclosed with the person's prior consent.

The principle that no confidential information will be passed on to third parties without the express permission of the individual concerned applies unless there is a serious concern that there may be a threat to the safety or life of the individual or is otherwise required by operation of law.

Information held by [COMPANY] complies with the requirements of the Data Protection Act and the Freedom of Information Act and relevant [COMPANY] policies. In order to comply with the above principles, [COMPANY] staff must take all necessary precautions to ensure the safekeeping and accuracy of all records containing personal information. Where information is recorded or shared, the terminology used must be respectful. You may use this policy as a guide for what is acceptable language.

### **Guidelines for Management & Human Resources**

If an employee informs you of his or her intention to transition, or if an employee is currently in the transitioning process, your support is critical. Not only will your actions positively impact the outcome of the transition but it will also limit work disturbances and encourage productivity.

It may be frightening to an employee to make him- or herself vulnerable to a person upon whom their job depends. If you are not familiar with transgender individuals, seek information from the resources listed at the end of this document or allow the employee to educate you. Be open-minded and discuss with the employee his or her needs and concerns.

Human Resources will provide advice and assistance for supervisors working with a transitioning employee.

Supervisors should be careful of personal opinions regarding an employee's professional appearance. If the employee dresses or behaves inappropriately, this issue should be dealt with in the same manner it would with any other employee. Contact Human Resources if you have any questions or concerns.

### **Statement of Confidentiality**

The transgender status of an employee is considered confidential and should only be disclosed on a need-to-know basis, and only with the consent of the employee. However, transitioning employees are encouraged to participate in the necessary education of their co-workers at whatever level they are comfortable.

### **Initial Conversation**

Immediately reassure the employee that the company will be as supportive as possible. Assure the employee that he or she is covered by the existing policies outlined in the "Overview" section of this document.

Make it clear to the employee that your conversation will be held in confidence and inform the employee that you want to discuss how you and the company can assist him or her during their coming out or transition. Ask the employee for his or her suggestions on what you can do to help.

Confirm who will be the company's main point of contact (manager or Human Resources) to manage the transition and schedule a meeting with the employee to discuss and agree upon an action plan to assist the employee in his or her transition.

Ask the employee if he or she wishes to inform their manager, co-workers and clients themselves, or prefers that this to be done for them. Then determine the best timing for that process.

Ask the employee if he or she expects to change his or her name. If yes, ask what name and pronoun the employee will use and when the employee will want you to begin referring to him or her using the new name and/or pronoun.

Discuss the expected timeline and anticipated time off required for medical treatment, if known. Explain that normal sick pay and leave policies will apply.

Discuss and agree upon the procedure for adhering to the company's dress code and agree on the timing in which the employee will begin his or her transition at work. This will probably be the point at which the individual begins to present consistently with his or her gender identity, including change of name, pronouns, dress, grooming, appearance and restroom use.

The employee may feel more comfortable working in a different position during his or her transition. Discuss whether the employee prefers to remain in his or her current position or be redeployed.

Provide the employee with the available resources outlined in the "Resources" section of this document. Ask him or her to inform you of anything else you can do to be of assistance.

### **Addressing Concerns of Co-workers and Clients**

A lack of knowledge about transgender issues has the potential for creating misunderstanding and tension in the workplace. Remind all employees that they are expected to conduct themselves in accordance with company policies.

In addition to the initial workgroup meeting at which the employee's manager announces the transition (see Appendix A), offer trainings or briefing sessions for employees on transgender issues; this will help promote a positive work environment for all employees.

Trainings or briefing sessions should be completed prior to the employee's transition. This provides important information to co-workers, managers and clients on what to expect when the individual begins his or her transition. Establishing some level of comfort as to what the transition is and why it is happening is important for preventing future misunderstandings or issues.

Employees who raise concerns about a transgender co-worker should be provided [COMPANY]'s equal employment opportunity policy, harassment policy and other related

policies. They should be informed that they must work cooperatively with their co-workers regardless of their gender identity and that failure to do so could result in corrective action, including termination of their employment.

If employees express concern regarding the appearance of a transgender co-worker after reviewing [COMPANY]'s policies or if they are curious about the change in appearance, the manager may meet with employees individually to inform them of the change and to answer questions.

If employees have concerns with a transgender co-worker's usage of a restroom or other sex segregated facility after reviewing [COMPANY]'s policies, the employee with the concern may be permitted to use a different or single-occupancy facility, if such facilities exist at that work location.

### **Pronoun and Name Changes**

Employee records and work-related documents should be retained under the individual's legal name (as reflected on identification documents verified at the start of employment) unless and until the individual makes a legal change.

The transgender status of an employee is considered confidential and should only be disclosed with the consent of the employee as per the Right to Privacy section above.

Where a person's legal name does not match his or her new name, the new name should be used on all documentation, such as e-mail, phone directory, company identification card or access badge, name plate, etc., except where records must match the legal name, such as on payroll and insurance documents.

In everyday written and oral speech, the new name and pronouns should be used when the employee is ready.

**Note on pronouns:** If a co-worker is transitioning and you are not certain which pronouns to use, it is appropriate to respectfully ask what name and which pronouns you should use. In general, it is considered insensitive to refer to someone by the wrong pronouns once you have established which set of pronouns he or she prefers.

### **Leave Benefits for Transgender Employees**

Managers should provide sufficient flexibility to meet the employee's needs for appointments. Time off for medical procedures is to be treated the same as other scheduled medically necessary procedures.

### **Surgeries**

The process of transitioning may include one or more surgeries. In addition to genital surgery, surgeries can include facial feminization or other feminizing procedures for those transitioning from male to female, or chest reconstruction or other surgeries for those transitioning from female to male. Recognize that a transitioning employee may or may not have these surgeries for any number of personal reasons and, furthermore, that surgery in and of itself is not the goal of a gender transition.

As with other aspects of a transition, plans should be discussed and communicated only with affected parties in order to manage expectations and to minimize disruption. Medical information, including surgery plans communicated by an employee, should be treated confidentially.

### **[COMPANY] Resources for Employees and Managers**

- Job-Related Planning for a Gender Transition (see Appendix A)
- Local Human Resources representatives
- Occupational health nurse or medical staff within [COMPANY]
- Employee Assistance Program
- Global Diversity Office
- Gay, Lesbian, Bisexual and Transgender Employee Resource Group

### **External Resources for Employees and Managers**

- GLEN Diversity Champions – [www.diversitychampions.ie](http://www.diversitychampions.ie)
- Transgender Equality Network Ireland (TENI) – [www.teni.ie](http://www.teni.ie)
- Human Rights Campaign Foundation – <http://www.hrc.org/topics/transgender>

### **References:**

These guidelines are based on GLEN's Gender Transition Guidelines 2014 developed in consultation with TENI, Transgender Equality Network Ireland, September 2014 and United Kingdom Equalities Office Guidance for Employers on the Recruitment and Retention of Transgender Staff 2015.

## Appendix A: Job-Related Planning for a Gender Transition

These are the recommended steps in an on-the-job transition for a transgender employee at [COMPANY]. It may be appropriate to adapt this generic process to fit an individual person or a specific organisation. This planning document is to be used as a supplemental tool for the purpose of planning a transition.

### Advance Preparation

1. The transgender employee meets with Human Resources. The employee shares his or her gender identity and intent to transition.
2. The same Human Resources representative(s) and the employee meet with the employee's immediate manager to share the employee's intent to transition.

**Additional Recommendation:** Human Resources representative and immediate manager should meet with the officer/vice president/area leadership for informing, garnering support and involving them appropriately in the announcement of the transition.

3. The appropriate set of stakeholders should be identified to plan the transition. This will include the employee, his or her manager and the Human Resources representative. If necessary, involve others as locally appropriate, such as a local transgender expert; Gay, Lesbian, Bisexual and Transgender Employee Resource Group; or Employee Assistance Program. The stakeholders should become familiar with educational resources, including company policy and books on the subject.
  - Consider which people in the company you may need to have engaged at some point during the transition and when they need to be engaged.
  - Consider any specific issues that need to be addressed sooner rather than later.
4. A joint plan should be developed between employee and manager, Include solutions to the issues listed here:
  - a. The date of the transition, i.e., the first day of the change of gender presentation, pronoun usage and name. Recognise that the date of the transition will be driven primarily by the employee's situation and concerns.
  - b. How employee's workgroup, clients and/or vendors will be informed of the change. Before the general announcement, the employee may choose to talk to some of his or her co-workers to disclose his or her plans on a one-on-one basis.
  - c. Whether there will be an educational workshop (a "Transgender 101") given to staff.
  - d. What changes will be made to records and systems, and when.
  - e. How current policies against discrimination and benefits protect this employee.
  - f. How the dress code will be followed.
  - g. The expected plan for use of gender-specific facilities, such as restrooms.
  - h. Any time off required for medical treatment, if known.
5. Make advance arrangements for name changes to be effective on the day of transition, so that nameplates, badges, etc. will be available on the first day.

See the list in "The First Day of Full-Time Workplace Gender Transition" below. Consider how long certain Human Resources functions take (e.g., legal name changes in Human Resources systems, company directory, etc.).

## **The Day of the Announcement**

1. Hold a workgroup meeting, or include this in an already-scheduled face-to-face meeting. Teleconference in any non-local stakeholders. Everyone in the workgroup whom the employee interacts with often should be included. *Do not do this by e-mail.* A handout is optional in conjunction with the face-to-face meeting. The employee should choose whether to be personally present at this meeting, depending on comfort level.
2. The manager of the workgroup (the department head, for example) should make the announcement, in conjunction with the highest level manager in the group, to show support. The manager should:
  - a. Make it clear that the transitioning employee is a valued employee and has management's full support in making the transition.
  - b. Explain company policy and recommendations.
  - c. Stress that on the transition day the employee will present him- or herself consistently with his or her gender identity and should be treated as such; for example, he or she should be called by the new name and new pronouns.
  - d. Lead by example. Use the new name and pronouns in all official and unofficial communication.
  - e. Make it clear that the transition is "no big deal" and that work will continue as before.
  - f. Answer people's questions.
  - g. If a "Transgender 101" workshop is part of the transition plan, announce it. It should be offered before the day of transition.

## **The First Day of Full-Time Workplace Gender Transition**

On the first day of transition, the employee's manager should take these steps, much as he or she would for a new or transferred employee:

1. Issue a new company identification badge with a new name and photo.
2. Place a new nameplate on door/desk/cubicle/workstation.
3. Update any organization charts, mailing lists and other references to the new name.
4. Issue paperwork for the Human Resources employee database, effective the first day of transition, to change the following:
  - a. New name.
  - b. Change the gender marker ("M" or "F").
  - c. Update the e-mail address if it contains the old name.
5. The manager should plan to be on site with the worker the first day to make introductions, support the worker, ensure respectful and inclusive treatment and make sure that work returns to normal after a few hours.