

DOL POLICIES ON GENDER IDENTITY: RIGHTS AND RESPONSIBILITIES

Since the Department of Labor's (DOL's or the Department's) earliest years, it has been committed to promoting equal opportunity in employment. This commitment, which has grown significantly over time, necessarily extends to all DOL employees and applicants for DOL employment. On April 28, 2011, the Secretary of Labor signed new, more robust policy statements making clear that the Department will not tolerate discrimination against, or harassment of, DOL employees or applicants for employment on the basis of their gender identity. These policies:

- classify discrimination and harassment based on gender identity as a form of *sex-based* discrimination and harassment;
- are consistent with the policies of other Federal agencies, such as the Office of Personnel Management (OPM), the Equal Employment Opportunity Commission (EEOC), and the Department of Justice (DOJ); and
- reaffirm the Department's commitment to fair treatment of and equal opportunity for all its employees and applicants.

Why has the Department amended its policies explicitly to prohibit discrimination and harassment based on gender identity?

The Department's policies reaffirm DOL's commitment to fair treatment of, and equal opportunity for, *all* people. Policies prohibiting discrimination based on gender identity¹ help create the reasonable expectation of a safe environment in which all employees and applicants for employment are evaluated by their performance, rather than others' perceptions of, or level of comfort with, their gender identity or gender expression. Further, DOL's policies are consistent with the policies of other Federal agencies, such as EEOC, DOJ, and OPM, and this guidance document is consistent with OPM's *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace*.

Studies have shown that transgender people face disproportionate amounts of discrimination in all areas of life, especially in employment. A study of 6,450 transgender people, published in 2011, indicated that an astonishing ninety percent (90%) reported experiencing mistreatment, harassment, or discrimination on the job, including invasion of privacy, verbal abuse, and physical or sexual assault.² These statistics underscore the importance of the Department creating a safe environment for all of its employees.

Employees' and Applicants' Rights

¹ Key terms used throughout this guidance document are defined in the attachment, Gender Identity: Key Terminology.

² Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, (2011), *available at* http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf, at 56.

Who is protected from gender identity discrimination? Gender identity discrimination can affect anyone. Policies barring gender identity discrimination not only protect those who openly identify as transgender or express their gender in a non-conforming way. They also protect other people against sex stereotyping -- for instance, women who some people think are “too masculine” or men who some people think are “too feminine.” In summary, DOL policies barring discrimination and harassment on the basis of sex protect employees and applicants for employment from being harassed, denied employment or promotion, or otherwise subjected to adverse treatment because they do not conform to societal gender expectations.

What are my rights under DOL’s gender identity policies? Employees and applicants for employment have the right to experience a workplace free of discrimination, including harassment. If you believe that you have experienced discrimination, you should contact your [agency](#) Equal Employment Opportunity (EEO) Manager or the DOL Civil Rights Center (CRC), which is responsible for ensuring nondiscrimination within the Department and processing discrimination complaints. CRC may be reached by phone at (202) 693-6500 (voice) or (800) 877-8339 (Relay), or by e-mail at CivilRightsCenter@dol.gov.

Responsibilities of Managers and Supervisors

What are my responsibilities under DOL’s policies barring gender identity discrimination and harassment?

- **Communicate clearly** with your employees about what type of behavior is lawful and appropriate in the workplace with regard to all forms of discrimination and harassment, including gender identity, and about what consequences your employees will face if they violate the law.
- The most effective way for a manager to set the tone in an office or other workplace setting is to **lead by example**. Treat with dignity and respect your transgender and gender non-conforming employees, customers, and others with whom you may come in contact. If an employee or customer begins to transition from one gender to another or approaches you regarding being transgender, or if other employees learn that a co-worker, customer, or other person with whom they interact is transgender, there are many ways in which your words and actions can lead to a welcoming and safe atmosphere. Some specific examples:
 - **Names and Pronouns.** Refer to each person by the name, and the gender-specific pronoun, *by which the person wants to be called*. If you don’t know the preference of a transgender person, ask in a tactful way. Continued intentional misuse of the person’s name and pronouns may breach the person’s privacy, may put him or her at risk of harm, and in some circumstances, may be considered harassment.
 - **Confidentiality and privacy.** A person’s transgender status should be treated with sensitivity and confidentiality, just as one would treat any other deeply personal life experiences. A transgender employee may or may not want to discuss his or her transgender status with co-workers. Respect the wishes of the employee.

- If the transgender employee indicates that questions or discussions are welcome, instruct other employees that any questions they ask or discussions they initiate must be respectful in tone and appropriate in content.
 - If the transgender employee wishes to keep information about the details of his or her transition as private as possible, respect those wishes. Do not ask the employee questions about his or her medical status or treatment unless such questions are necessary to address any workplace issues that may arise with the employee’s medical plans. In addition, remember that medical information about individual employees is protected, and disclosure should be limited.
 - In either case, do not engage, and do not permit employees to engage, in gossip or rumor-spreading about the transgender employee, or about the employee’s personal situation or medical treatment.
 - *Train your employees* to treat all of their colleagues, customers, and others with the same dignity and respect.
- Managers and supervisors should also ***provide support for transitioning employees*** in other ways:
 - *Dress and appearance.* As part of the transition process, the physical appearance of a transitioning employee may change due to the effects of hormone therapy. In addition, employees at the “real life experience” stage of transition will dress in the clothes and adopt the appearance of their identified gender. Dress codes, where they exist, should be applied to employees transitioning to a different gender in the same way that they are applied to other employees of that gender. For example, if all male employees are required to wear jackets and ties, an employee transitioning to male should wear a jacket and tie as well. Dress codes must not be used to prevent a transgender employee from living full-time in the role consistent with his or her gender identity.³
 - *Restroom access.* The Department is guided by the Office of Personnel Management (OPM) on the use of sanitary and related facilities by transgender employees in the federal workplace.⁴ OPM’s guidance on this topic cites the Department of Labor’s Occupational Safety and Health Administration’s guidelines that require agencies to make access to adequate sanitary facilities as freely available as possible for all employees in order to avoid serious health consequences. **(For more information on OSHA’s guidelines, please see [April 16, 2013 Letter to Maine Human Rights](#))**

³ Managers/supervisors should review any dress and appearance codes to ensure that (1) any requirement that applies to only one sex is not significantly more difficult to comply with than are requirements applicable only to the other sex, and (2) that the policies as a whole do not demonstrate any discriminatory or sexually stereotypical intent.

⁴ Office of Personnel Management, Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace, available at <http://www.opm.gov/diversity/Transgender/Guidance.asp>

Commission.) OPM has interpreted OSHA's guidelines to support the policy that, for a federal employee who has begun living and working full-time in the gender consistent with the employee's gender identity, federal agencies should allow that person to use the restrooms and locker room facilities (if provided to other employees) that are consistent with his or her gender identity. Transitioning employees should not be required to undergo, or provide proof of, any particular medical procedure to use facilities designated for use by a particular gender. Under no circumstances may an agency require an employee to use facilities that are unsanitary, potentially unsafe for the employee, or located an unreasonable distance from the employee's work station.

- *Identity documentation.* Consistent with the Privacy Act, the records in an employee's Official Personnel Folder (OPF) and other employee records (pay accounts, training records, benefits documents, etc.) should be changed to show the employee's new name and gender, once the employee has begun working full-time in the gender role consistent with the employee's gender identity. Employees should also be permitted to change any identity documentation, such as ID badge, email account, business cards, and so on.
- *Sick and medical leave.* Employees receiving treatment as part of their transition may use sick leave under DOL regulations. Employees who are qualified under the Family Medical Leave Act may also be entitled to take medical leave for transition-related needs.
- During the hiring process, hiring managers and supervisors should ***be sensitive to the possibility that applicants have transitioned.*** The name and gender on the application should correspond with the person's current usage or legal status; however, background or suitability checks may disclose a previous name that indicates a gender different from the one the applicant is currently presenting. In such cases, hiring managers should tactfully ask whether the applicant was previously known by a different name, and confirm with the applicant the name and gender that should be used when checking his or her references.
- **Should you have further questions, please contact CRC at (202) 693-6500.**

Gender Identity: Key Terminology

What is the difference between sex and gender? *Sex* (i.e., male or female) is assigned at birth based on a combination of a baby's biological characteristics, including chromosomes, hormones, and reproductive organs, and is originally documented on a person's birth certificate. The [World Health Organization](#) defines *gender* as the "socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women."⁵ These characteristics are traditionally referred to as "masculine" or "feminine."

What is gender identity? *Gender identity* refers to a person's innate, deeply felt psychological sense of gender, which may or may not correspond to the person's body or sex assigned at birth.⁶

What is gender expression? *Gender expression* refers to how a person represents, or expresses, his or her gender identity to others -- through appearance, dress, mannerisms, speech patterns, social interactions, and other characteristics and behaviors.

What does "transgender" mean? As indicated above, society has traditionally expected persons who were assigned as a particular sex at birth to behave a certain way in relation to their gender: males are expected to behave in a "masculine" way, females in a "feminine" way. *Transgender* is an umbrella term covering anyone whose gender identity or expression does not conform to society's expectations for, or stereotypes about, people assigned a particular sex.

As an umbrella term, the word "transgender" is an adjective that covers a wide spectrum of people. It includes persons who are *transsexual*. A transsexual is someone who — with or without medical treatment — identifies and lives his or her life as a member of the gender other than the one assigned at birth.⁷ Transgender also includes persons who are *gender non-conforming*. Gender non-conforming people may not consider themselves transgender, but have an appearance or gender expression that does not conform to gender stereotypes.

What is gender transition? Some people have changed, or are in the process of changing, their physical bodies to conform to their internal sense of gender identity. This process is known as *gender transition* or *transitioning*. The World Professional Association of Transgender Health (WPATH), an international organization devoted to the study and treatment of gender-identity issues, has published WPATH Standards of Care, which provides clinical guidance to health care professionals on safe and effective treatment of gender-identity issues.

As explained by the WPATH Standards of Care, gender transition will frequently proceed in the following order. First, the transgender person will meet with a mental health care provider to ascertain what steps are appropriate in addressing the incongruity between the person's gender

⁵ World Health Organization, available at <http://www.who.int/gender/whatisgender/en/index.html>.

⁶ *Gender identity* is frequently confused with sexual orientation, but the two concepts are different. Sexual orientation refers to how we interact with and are attracted to others, while gender identity refers to how we see ourselves. Just like gender-conforming people, transgender people can be of any sexual orientation.

⁷ In contrast to the term "transgender," *transsexual* is not an umbrella term, and many people who identify as transgender so not identify as transsexual.

identity and the sex that the person was assigned at birth. After appropriate counseling, the person may begin hormone therapy, under the supervision of mental and health care professionals. This step will begin the process of changing the person's secondary sex characteristics (such as breast size and shape or facial hair) to those associated with the gender with which the person identifies. After a period of time on hormone therapy, many transgender people transition to "real life experience" by living full-time—both at home and in the workplace—in the gender role consistent with their gender identity. Last, some transgender people may undergo surgical procedures to change their appearance to conform with their identified gender.

Not all transitioning people go through the same process. Some may not undergo medical treatment for various personal, financial, or medical reasons, but may modify their gender expression – their dress, mannerisms, and so forth -- to be consistent with their gender identity. Regardless of these factors, all transgender people are entitled to undertake the transition steps that are appropriate for them, and must be treated with dignity and respect as they do so.