



Navigating Gender Inclusion in Gendered Spaces: Best Practices for Employers

Policies and Practices of Best-In-Class Employers

Employers who seek to hire and retain the “best and brightest,” stay ahead of evolving local, state and federal law, and mitigate legal exposure to claims of discrimination should adopt the following recommendations:

These policies and practices are already in place in many top companies, defining them as truly “best in class” employers for transgender and gender non-conforming people.

Recommendation: Non-Discrimination Policy Includes “Gender Identity or Expression” as a Protected Category

Include “gender identity or expression” or “gender identity” among the list of protected categories in your firm-wide non-discrimination and anti-harassment policies.

Employment policies and “codes of conduct” that delineate protected categories — especially the primary non-discrimination or Equal Employment Opportunity policy — should include the term “gender identity or expression” or “gender identity.” Non-discrimination policies should be included in employee handbooks and be easily accessible to employees, suppliers, clients and customers. This can be accomplished by prominently including policies on the business’ website. If applicable, make sure to clearly communicate to your customer-facing employees how your non-discrimination policies apply to customers.

AT&T’s Equal Employment Opportunity Statement

AT&T and its subsidiaries are committed to equal employment opportunity. AT&T Companies are Equal Opportunity Employers. All qualified candidates will receive full and fair consideration for employment. All applicants and employees are protected from unlawful discrimination and harassment on the basis of race, color, religion, national origin, sex, age, sexual orientation, gender, gender identity, marital status, citizenship status, veteran status, disability or any other category protected by applicable law.

Source: AT&T website

“Our policy now provides all gay, lesbian, bisexual and transgender employees with equal access to opportunities and fair treatment on the basis of merit. Simply put, all GLBTA employees can feel one step closer to bringing their whole selves to work.”

— Deb Elam, GE’s Diversity Officer when announcing the amendment of GE’s non-discrimination policy to include gender identity or expression in 2012

Recommendation: Create Transgender-Inclusive Practices across the Organization

Best-in-class employers will want to ensure their practices are inclusive across the workplace. Areas to be addressed include administrative and record-keeping practices, access and use of facilities, dress codes and gender self-identification.

Administrative and Record-Keeping

Recommendation: Companies should recognize a transgender employee's preferred name and gender to the greatest extent possible, including internal and external personnel directories, e-mail address and business cards. Further, they should develop systems for addressing situations in which an employee's preferred name and gender expression does not match legal documents.

Recommendation: For transitioning employees with legal name and gender marker changes, employers should update an employee's name and gender in personnel and administrative records accordingly.

In the event an employee's name or gender marker does not match legal documents, employers should recognize the individual's preferred name and gender wherever possible. Be sensitive to those employees who are not yet able to legally change their gender markers and endeavor to accommodate them.

In recruiting efforts, employers should be sensitive to those employees whose name and gender markers may not match their records; for example, college transcripts, military service records and professional certifications, which may be difficult if not impossible to change.

Human resource and administrative professionals need to be cognizant of confidentiality issues and protect a transgender employee's gender history where records may be revealing but the employee is not out in the workplace as transgender.

Assess to Facilities

Recommended: Allow employees to access gender-segregated facilities such as locker rooms and bathrooms corresponding to the gender with which they identify. Co-workers uncomfortable with a transgender employee's use of the same restroom or locker room should be advised to use separate facilities.

Restrooms and locker rooms can be a challenging topic for transgender and non-transgender employees alike. Allowing employees to use the facility that corresponds with their gender identity not only dignifies transgender people, it also ensures that the employer is not in violation of Occupational Safety and Health Administration (OSHA) regulations or of local or state non-discrimination laws where they exist. Further, preventing a transgender person from using the restroom that corresponds with their gender identity and expression may be construed as discriminatory under Title VII of the Civil Rights Act.

Be Proactive – Gender Transition Guidelines

For employees who are transitioning on-the-job, having a set of written gender transition guidelines can help avoid misunderstandings by proactively addressing how name and gender marker changes are managed as well as when the employee will change facilities.

(See Module 4)

It may be helpful to remember that many people value privacy, not just transgender employees – so employers may want to consider creating single-use, gender-neutral restrooms for all employees to use – in addition to gender-segregated restrooms. Keep in mind that any decision to require transgender employees to use a certain restroom could be discriminatory and could lead to liability risks for the employer.

Where multiple occupant, gender-segregated restrooms already exist, employers may want to enhance privacy with features such as flaps to cover gaps in stall doors or stall walls and doors that extend from floor to ceiling.

For locker rooms, employers should create private changing areas using stalls or curtains. Most employers can create at least one such area with minimal trouble or investment. Further, where showering facilities are necessary, it is best for the privacy of all employees to have individual stalls. Again, where building facilities and options are limited, having at least one private, single shower stall will work to accommodate employees desiring additional privacy.

While no single solution will work for every worksite, employers committed to transgender inclusion should be able to find reasonable solutions that maintain the dignity and respect of all their employees.

What is the employer's obligation regarding restrooms?

Employers are legally required to provide workers reasonable access to restroom facilities. The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) requires that employers make toilet facilities available so that employees can use them when they need to do so, and the employer may not impose unreasonable restrictions on employee use of the facilities.

Further, OSHA has issued [guidance to employers on best practices regarding restroom access for transgender workers](#). The core principle of these guidelines is that all employees, including transgender employees, should have access to restrooms that correspond to their gender identity.

No federal, state or municipal laws or regulations specifically pertaining to gender identity require employers to utilize one type of bathroom over another, or to construct new facilities to accommodate transgender individuals.

However, some jurisdictions regulate aspects of these restrooms. For example, the District of Columbia requires single-occupant restroom facilities in any public space (e.g., restaurants) to be gender neutral -- restrooms designed for use by one individual at a time may not have a specific gender designation with "male" or "female" signage or icons -- but does not require employers to have single-occupant restrooms instead of another type.

Allow Self-Identification

Recommendation: Where appropriate, expand options for self-identifying gender identity on internal forms and in surveys.

The question of gender with its seemingly simple "female" and "male" options can pose a challenge for transgender people. Many transgender and gender non-conforming people do not identify with either

one of the simple binary gender designations, and some may feel limited by the “female” or “male” options.

See examples of
self-ID questions
following this
section

On the other hand, employers committed to diversity and inclusion may want to track their initiatives with regard to the transgender community alone or the LGBT community as a whole in recruiting, retention, professional development or other employee satisfaction measurements.

Employers generally capture employee demographic information in two ways: 1) in confidential employee records via Human Resource Information Systems (HRIS), and 2) through anonymous employee engagement surveys. Whether storing this information as part of the HRIS record or using it in a survey, employers should be sensitive to transgender and gender non-conforming people in how they request the information and expand the options to self-identify beyond the binary male/female.

Success Factors Self-Identification

The success of LGBT self-identification in both surveys and confidential records relies on the perceived level of cultural acceptance and LGBT competency of the organization. Before adding questions about gender identity or sexual orientation, companies should consider the following questions:

- When were gender identity and sexual orientation added to the non-discrimination policy? Are employees aware of the policy?
- Does the organization have a culture where senior executives consistently or openly talk about gender identity or sexual orientation?
- Has the employer ever asked any employees questions about their gender identity or sexual orientation?

Source: [Out & Equal Workplace Advocates](#)

Questions to ascertain gender identity can be structured to allow anywhere from quite restrictive answers to quite open ones. Employers should evaluate how best to capture the data they need while allowing for a range of expression.

Seventy-two percent of LGBT employees say they would self-disclose their sexual orientation or gender identity along with other demographic information in an anonymous human resources survey, while 18 percent say they would not self-disclose and 10 percent are not sure whether they would or not.

Of the combined 28 percent that would either not self-disclose or are unsure, 59 percent indicate they “don’t trust that the survey is confidential” and 40 percent indicate that they are “not sure how the information would be used.”

Source: HRC’s [“Degrees of Equality” report](#)

To maximize response rates over time, employers need to proactively communicate the purpose for the self-identification questions and emphasize the confidentiality of survey answers in order to address these concerns.

As with all sensitive and confidential data, employers asking about gender identity and sexual orientation should take care to protect how the data are used, stored and reported as well as consider any legal restrictions on data collection and storage here in the United States as well as globally.

Make Dress Codes Gender Neutral

Recommendation: If an employer has a dress code, it should avoid gender stereotypes and be enforced consistently. If an employer must have a gender-specific dress code, then transgender employees should be allowed to dress in accordance with their gender identity.

Employers should revise dress codes and policies to make them gender neutral. For instance, policies that specifically define the kinds of attire that males and females may wear tend to be based on sexual stereotypes and gender expectations. By contrast, policies that require professional business attire irrespective of sex or gender are recommended. For employers who have a “male” and “female” version of a uniform, employees should be allowed to wear the uniform that comports with their gender identity.

Conversations: Ensure Employee’s Privacy

Recommendation: Keep the employee’s health status private and confidential, limited to the fewest people necessary and, to the extent possible, limited to Human Resources professionals. Even in these parameters, discussions about specific medical treatments or care should be limited to need-to-know information.

With few exceptions, employers do not need to know about a transgender employee’s medical treatments beyond planning for potential medical leave for transitioning employees. However, some detailed conversations may become necessary in the process of attaining adequate insurance coverage from an employee health plan.

State and federal laws, including the Health Insurance Portability and Accountability Act (HIPAA), govern the privacy of individual health information.ⁱ While healthcare providers and plans — rather than employers — are bound by the privacy obligations under HIPAA, more robust state laws, and a general interest in maintaining employee privacy, should discourage most inquiries into a transgender employee’s medical status as well as disclosure of any voluntarily-provided health information to unnecessary staff.

Although the transgender status of an employee that transitions on the job becomes a more or less “public” matter, discussions about the employee’s personal situation and medical treatment — including surgical procedures or hormone use — should be off-limits in the workplace. Some transgender people may feel more comfortable having these frank discussions with their colleagues than others, in which case having these discussions should be left to their discretion. In general, though, to help manage the workplace conversations and speculation provide the transitioning employee with a standard statement such as: “Like other health matters, management has asked me to keep medical conversations to a minimum.”

When a transgender employee first begins employment with an employer, or moves to a different part of the same organization with new colleagues (such as a transfer from one state to another), that person may never have a need to disclose their transgender status to their employer. Employers should guide managers to ensure confidentiality in the event that they learn of an employee’s transgender status from other sources in the normal course of doing business, rather than from the employee him or herself.

Summary of Best Practices:

Administrative & Record Keeping:

Allow for preferred name and gender where possible. Smoothly facilitate legal name and gender marker changes.

Facilities:

Allow employees to access gender-segregated facilities such as locker rooms and bathrooms corresponding to the gender with which they identify.

Self-Identification:

Where appropriate, expand options for self-identifying gender identity on internal forms and in surveys.

Gender-Neutral Dress Codes:

If an employer has a dress code, it should avoid gender stereotypes and be enforced consistently. If an employer has a gender-specific dress code, then transgender employees should be allowed to dress in accordance with their gender identity.

Maintain Confidentiality:

Keep the employee's health status private and confidential, limited to the fewest people necessary and, to the extent possible, limited to Human Resources professionals. Even in these parameters, discussions about specific medical treatments or care should be limited to need-to-know information.

Examples of Employee Self-ID Questions

As noted in Module 3 of this guide, the best way to allow for self-identification varies based on several variables such as the purpose and use of the data, the perceived overall level of LGBT protections and cultural competency, and the mode of self-identification (engagement surveys vs. applications vs. HR information systems).

One overall recommendation is to restate the company's commitment to non-discrimination on the basis of sexual orientation, gender identity or expression prior to asking for self-identification as well as to reiterate the purpose of the question.

Examples:

Broad Self-Identification as LGBT

Our company does not discriminate on the basis of sexual orientation, gender identity or expression. In order to track the effectiveness of our recruiting efforts and ensure we consider the needs of all our employees, please consider the following optional question.

Do you consider yourself a member of the Lesbian, Gay, Bisexual and/or Transgender community?

☐ Yes

☐ No

Most Restrictive: Gender

Q: What is your gender?

☐ Male

☐ Female

☐ Other

☐ Prefer Not to Say

Less Restrictive: Gender

Q: What is your gender?

☐ Male

☐ Female

☐ Other _____

☐ Prefer Not to Say

Least Restrictive: Gender

Q: What is your gender? _____

Most Restrictive: Gender Identity

Transgender is a term that refers to people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth.

Do you identify as transgender?

☐ Yes

☐ No

Less Restrictive: Gender Identity

Q: What is your gender identity?

- ☐ Male
- ☐ Female to Male Transgender (FTM)
- ☐ Female
- ☐ Male to Female Transgender (MTF)
- ☐ Other _____
- ☐ Prefer Not to Say

Least Restrictive: Gender Identity

Q: What is your gender identity?

- ☐ Male
- ☐ Female
- ☐ Genderqueer
- ☐ Transgender
- ☐ Male to Female Transgender (MTF)
- ☐ Female to Male Transgender (FTM)
- ☐ Other _____
- ☐ Prefer Not to Say

ⁱ U.S. Department of Health and Human Services, Office of the Secretary, "45 CFR Parts 160 and 164 Standards for Privacy and Individually Identifiable Health Information; Final Rule," *Federal Register* 67, no. 157, Aug. 14, 2002. Also available at: <http://www.hhs.gov/ocr/hipaa/privrulepd.pdf>.