

Transgender Rights in the Workplace

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Title VII prohibits discrimination because of an individual's race, religion, sex,
or national origin.

Bostock v. Clayton County, Georgia Gender

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“Sex” includes sexual orientation and transgender status

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“An individual’s homosexuality or transgender status is not relevant to employment decisions. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”



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Recent Transgender Cases

- F.V. v. Barron, 286 F. Supp. 3d 1131 (D. Idaho 2018)
 - IDHW’s policy of categorically and automatically denying applications submitted by transgender individual to change the sex listed on their birth certificates is unconstitutional under the Equal Protection Clause and intermediate scrutiny applies to transgender status
- Edmo v. Corizon, Inc., 935 F.3d 757 (9th Cir. 2019)
 - Transgender prisoner’s treating psychiatrist acted with deliberate indifference to her serious medical needs in violation of the 8th Amendment when he denied her gender confirmation surgery

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Transgender Employees: How to Avoid Missteps When Employees “Come Out”



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Creating an Inclusive Environment

- Talking about LGBTQ protections in the workplace creates inclusion



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Educate Yourself

Before handling a transgender employment issue, learn the terminology

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Terminology



<https://www.hrc.org/resources/glossary-of-terms>

Cisgender, Coming Out, Gender Binary, Gender Dysphoria, Gender-Expansive, Gender-Expression, Gender-Fluid, Gender Identity, Gender Non-Conforming, Genderqueer, Non-Binary, Pansexual, Questioning, Sexual Orientation, Transgender, Transitioning ...

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LGBTQ 101

- Ally – someone who supports LGBTQ people
- Bisexual – Attracted to more than one gender
- Cisgender – A person whose gender identity aligns with the gender assigned at birth
- Outing – exposing someone's lesbian, gay, bisexual, transgender, or gender non-binary identity to others without their permission

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LGBTQ 101

- Gender Identity – One's innermost concept of self as male, female, or a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.
- Gender Non-Conforming – people who do not behave in a way that conforms with the traditional expectations of their gender.
- Mis-gendering – referring to an individual by name or pronouns that do not conform with the individual's gender identity.

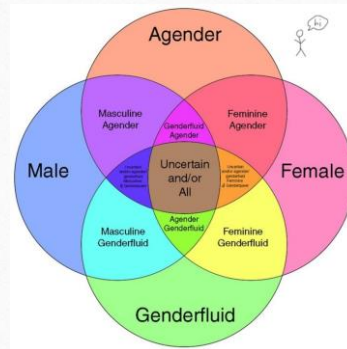
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LGBTQ 101

- Sex assigned at birth – the sex that a doctor uses to describe the external anatomy of a child
- Gender dysphoria – clinical diagnosis identifying distress caused when a person's assigned birth gender is not the gender they identify with
- Gender expression – External appearance of one's gender identity
- Transgender – a term for people whose gender identity and/or expression is different from cultural expectations based on the sex assigned at birth.
- Transitioning – a series of processes that some transgender individuals undergo in order to live as their true gender

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Binary versus Non-Binary



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Pronouns

- She/her/hers
- He/him/his
- They/Them/Theirs
- Ze/zir/zem
- Xe/xem/eyrs

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How to Handle an Employee Coming Out

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How to Navigate the Initial Conversation



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Questions to Ask

- What are your pronouns?
- What name would you like to go by?
- Will you legally be changing your name?
- Would you like an announcement to go out to the employees?
 - Workgroup only?
 - All staff?

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Questions to Ask

- What is your intended timing of the announcement?
- What bathroom do you feel most comfortable using?
- We do not anticipate negative reactions, but if there are any, are you comfortable navigating those?
- Who in the organization may I share this with?

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Workplace Announcements

Our employee, Edward Nowacki, has changed her name to Emma Nowacki. She is a transgender female and she uses the pronouns she/her/hers. Her right to a respectful workplace is not only covered under our agency's respectful workplace policy, but it is also protected under Title VII of the Civil Rights Act. While we have never permitted discrimination on the basis of sex, including transgender status, I want to make clear that discrimination for any protected reason, including any sex-based discrimination, will not be tolerated, and will be subject to discipline, up to, and including termination.

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Bathrooms

- All employees use the restroom s/he is most comfortable with
 - HR does not “assign” restrooms to employees
 - Must treat transgender employees the same as all other employees



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When we Make Mistakes

- Apologize
- Correct/Practice
- Move on



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Questions About Anatomy (i.e., seeking medical information)



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Negative Interactions with Customers

- Discuss concerns with customer, but reiterate we are intolerant of discrimination on the basis of transgender status
- Support and champion the employee to the customer
- Listen to any concerns your employee may have
- Only reassign customer to another employee if the transgender employee is no longer comfortable working with the customer

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Potential Conflicts with Free Speech and Religion in the Workplace

- Complicated
- Factually specific
- Balance of one employee's religious rights with another employees protection from discrimination under Title VII

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Pronouns and Religious Accommodations

- Interactive process to determine a reasonable accommodation when:
 - Bona fide religious belief
- Possible accommodations
 - Refer to individual by first name
 - Refer to individual by last name
 - Not forced to use pronouns, but if pronouns are used it needs to conform with the employee's gender identity

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Let's Identify What Went Wrong

- Marcus shared his transition with his supervisor and asked for accommodations

What did the Employer do wrong?

- Delays in communicating to HR
- Segregated facilities
- Legal requirements for name changes
- Shared complaints from co-workers

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Questions?

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