

Tips for Handling Issues Related to Transgender Employees in the Workplace

by Amber Rogers

At least 19 states, the District of Columbia, and Puerto Rico prohibit discrimination based on gender identity or expression. Moreover, approximately 225 cities and counties, including Dallas and Dallas County, prohibit employment discrimination on the basis of gender identity. Gender identity refers to a person's innate identification as male or female, which may or may not correspond to the person's designated sex at birth.

Transgender employees, those whose self-identified gender identity does not conform with his or her sex assigned at birth, can present numerous workplace challenges, such as which restroom they should use, what clothing they should wear, and which pronoun should be used when referring to them. Below are tips for employers on how to handle issues concerning transgender employees.

Adopt anti-discrimination policies. Despite an employer's size, it is generally a best practice to have a policy (or policies) that expressly prohibits discrimination in hiring, firing, promotions, compensation, and other employment decisions. The policies should designate protected categories, and specifically include sexual orientation, and gender identity and expression. Additionally, employers should periodically train employees (and have the employees acknowledge that they were trained) on topics such as discrimination prevention, sexual harassment, and methods for reporting inappropriate conduct. Policies should be readily available to employees, and included in areas such as break rooms, or employee handbooks.

Appearance standards/dress codes. Employers have the right to regulate employee appearance and behavior in the workplace, as long as it does not infringe on an employee's legally-protected rights. Transgender employees should be permitted to dress consistently with his or

her gender identity. Transgender employees, however, should abide by their employer's dress code. Dress codes should be modified to avoid gender stereotypes, and should be uniformly applied.

Privacy. While it is hard not to notice if one day your coworker is Mary, and the next day he is Mike, employers should respect a transgender employee's privacy. A transgender employee's medical information and disability status should be kept confidential and only disclosed to appropriate personnel. Employers should discourage coworkers from gossiping about a transgender employee's transition.

Pronouns. Employers should use a transgender employee's preferred name and correlating pronouns. Employers may also consider changing workplace identifiers to acknowledge a transgender employee's new name, such as name plates, badges, phone directory, and email addresses. Transgender employees should not be referred to with derogatory terms such as "shem," or "shemale." It is prudent to keep employee records, such as payroll and insurance documents, under the individual's legal name.

Restrooms. One of the most discussed and controversial issues surrounding transgender employees in the workplace involves which restroom the employee should use, i.e., the one designated for her sex assigned at birth, or the one designated for how she self-identifies. The issue is sensitive because it involves coworkers, and typically the only location in a workplace that is segregated based on sex. While options will often depend on the employer's workplace, the number and types of bathrooms that are available, and the employees at issue, it is advisable for the transgender employee and a member of the employer's human resources department, or supervisor, to work together on this issue. Employers

may consider creating a single-use, gender-neutral restroom. Additionally, employers should consider the employees' gender presentation and permit the employee to use the corresponding restroom. Forcing a transgender employee to use the restroom that matches her designated sex at birth could be considered discriminatory or harassing.

As new laws are enacted and more court decisions are decided, employers should be proactive and consider creating a transition plan to prepare to deal with issues that may arise with a transgender employee.

This article presents the views of the author, and is for general information and education purposes. It does not necessarily reflect those of Hunton & Williams LLP or its clients. No legal advice is intended.

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