



## **GUIDANCE REGARDING TRANSGENDER PERSONS IN THE WORKPLACE**

There are a small number of employees whose gender identity does not match the gender they were assigned at birth. Such people are known as ‘transgender’ or ‘trans’ employees.

It should be remembered that individuals will view themselves and their experiences in a unique way and they may have personal preferences in terms of the language that their employers use.

Transgender or “trans” employees can include:

- transsexual people, i.e. a person assigned female at birth who has transitioned or is transitioning to live as a man, or a person assigned male at birth who has transitioned or is transitioning to live as a woman, and
- people with non-binary identities, i.e. those who identify neither as male nor female.

### **PROTECTION FROM DISCRIMINATION**

The Sex Discrimination (Northern Ireland) Order 1976 details gender reassignment as being '*a process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such process.*'

Protection against unlawful discrimination extends to those trans people who intend to undergo, are undergoing or have undergone the process of gender reassignment so defined.

## **CHALLENGES FACED BY TRANS STAFF**

Trans colleagues face unique challenges in the workplace, from accessibility to toilet facilities to inappropriate words and actions which would be deemed as amounting to harassment and/or discrimination.

Language relating to someone's gender orientation which creates a hostile, humiliating or degrading environment may be deemed as transphobic language and further an act of harassment, contrary to the Sex Discrimination (Northern Ireland) Order 1976.

It is incumbent on all staff to challenge transphobia in the workplace and take action to stop it.

Sometimes employees are fearful how to address issues experienced by Trans colleagues.

Some issues and suggested actions to assist would include.

1. *Where you are uncertain about a colleague's gender* – don't guess or speculate which could be hurtful and humiliating. Rather, approach the colleague in a respectful fashion and ask which pronouns they prefer.
2. *Be respectful of a colleague's chosen pronouns.* To intentionally ignore a chosen pronoun may be deemed as discriminatory.
3. *Be mindful of discussing information* which may be not only confidential but irrelevant relating to a Trans colleague's medical history. Inappropriate questioning of anyone's medical history is entirely inappropriate, degrading and a violation of dignity.
4. *A trans colleague is free to select the toilet and shower facilities* appropriate to the gender they present. Employers are advised to discuss this issue with any

affected colleague and make plans to facilitate this election. Sometimes a Trans colleague may be undergoing a gender reassignment journey and, in such circumstances, they may feel more comfortable (depending on the progress of their journey) in using gender neutral toilet facilities if same can be accommodated (although of course there should be no requirement to do so).

In November 2015 the Government and Equalities Office (GEO) published [guidance](#) on the recruitment and retention of transgender staff. In relation to the provision of workplace facilities, the guidance states:

*‘a trans person should be free to select the facilities appropriate to the gender in which they present. For example, when a trans person starts to live in their acquired gender role on a full time basis they should be afforded the right to use the facilities appropriate to the acquired gender role. Employers should avoid discriminating against anyone with the protected characteristic of ‘gender reassignment’. Where employers already offer gender-neutral toilets and changing facilities, the risk of creating a barrier for transgender people is alleviated.’*

5. *Support and time off when transitioning* – Employers should be conscious of the journey being pursued by transitioning Trans staff and ensure that all help and support necessary is provided.
6. *Dress code* - Trans employees should be allowed to follow the organisation's dress code in a way which they feel matches their gender identity. If there is a staff uniform, they should be supplied with an option which suits them.
7. *Changing the employee’s personal records and other details - such as their pass to get into work, pay slip and email address* – once a Trans colleague informs you that they have changed gender, you can update your payroll records with their new gender alongside any changes to their title and name. Employers need to inform HMRC of the update in records. There may occasions when an employer needs to retain a previous name or gender on a

staff member's personnel file if it necessary (such as to avoid duplication of payroll records for tax, NI, pensions etc).

8. *When and what colleagues can be told about a transition or gender identity* (only if the employee agrees) – transitioning can be extremely difficult for a trans colleague, especially in the early stages when they attend work with a different gender status and presentation. Employers should prepare for such a change by consulting with their trans colleague in advance, accounting fully for the sensitivity merited and the need for privacy. Careful consideration should be given as to how colleagues are informed and by whom, ensuring that a trans colleague is agreeable to the information to be shared with colleagues in advance of doing so.

**Whilst the above provides some generic guidance and support, employers should not rely on same as legal advice and are advised to take specific legal advice on any specific issues that may arise in respect of workplace issues.**

### **Additional Help and Support**

Helpful guidance and support in respect of transgender issues in the workplace can be found at various sources including

- Transgender NI <https://transgenderni.org.uk/>
- The Rainbow Project <https://www.rainbow-project.org/>
- The Equality Commission <https://www.equalityni.org/Home>
- ACAS <https://www.acas.org.uk/supporting-trans-employees-in-the-workplace>

The above guidance was produced by MTB Solicitors (March 2024). If you require further assistance, please contact: Cormac Rice [cormac.rice@mtb-law.co.uk](mailto:cormac.rice@mtb-law.co.uk)