



Government
Equalities Office



The recruitment and retention of transgender staff

Guidance for employers

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Document Purpose

This guide, which is specifically aimed at employers, is designed to help them recruit and retain transgender employees. It is also a useful guide for the managers of trans staff and for trans staff themselves.

The document addresses the recruitment and retention of transgender staff from an operational and strategic perspective. We include practical advice, suggestions and ideas, based on the expertise and experience of our contributors (below).

By following this guidance employers will be better equipped to create a more inclusive culture for all staff.

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Creating a transgender-friendly workplace: a guide for employers

Introduction

For the majority of people their innate sense of being male or female - their gender identity - matches their birth sex and they do not have any questions over their gender identity. However, there are a small number of people whose gender identity does not match the gender they were assigned at birth. These are transgender people. Many will undergo the process of aligning their life and physical identity to match their gender identity, and this is called transitioning.

Individuals will always view themselves and their experience in a unique way, and will have personal preferences in terms of the language that their employers use, but we use the umbrella term “transgender” in this guidance, which includes non-binary.

People can change gender without any medical intervention. Medical processes are not essential to transitioning. Some people choose not to, or cannot, undergo a medical process but are still trans.

This guidance is designed to provide employers with advice on the recruitment and retention of trans employees and potential employees.

Those employers who understand the business and service benefits of a diverse and engaged workforce will recognise the need to respond to the differing needs of all their staff. They will understand the importance of affording everyone dignity and of making people feel included so that each individual adds value and can fulfil their potential without fear of discrimination.

However, there is sometimes a lack of awareness and understanding in relation to gender identity which sometimes results in employers failing to support staff effectively; often they lack the knowledge and the confidence to do so. Because only a small proportion of the population is trans, employers may never have needed to consider these issues.

The recruitment and retention of trans employees in the workforce need not be a complex process for employers.

Employers need only exercise a good approach to business practices. This guide provides some additional practical advice and clarification about how the law applies in England, Wales and Scotland.

To support employers to be trans-friendly, this practical guide is for:

- anyone in an organisation who wants to build their awareness and knowledge of trans issues; and
- it may be of specific interest to strategic and operational managers, directors, recruiters, human resource teams, trade unions, staff support networks and staff.

We hope that this guide enables employers to respond fully and confidently to specific issues that impact on trans people, be they employees or potential employees.

The business case

We are all different. Our different backgrounds, experience and perspectives mean we think about issues in different ways, see new solutions and opportunities to improve. The opportunity to think differently means we can do things differently.

These diverse skills are important for employers in all sectors; for private sector employers seeking commercial advantage and for public sector employers who need to deliver the best possible service to citizens.

We know that there is a wealth of research to show that workplaces that are more inclusive are also more productive.

When people feel valued by their employer for the contribution they can make to the organisation as an individual, regardless of their personal (or protected) characteristics, they are more likely to:

- Feel engaged and enthusiastic;
- Go the extra mile and expend discretionary effort;
- Have better attendance;
- Be a better team member;
- Stay longer and offer loyalty; and
- Talk about their employer in positive terms.

“My employer treated me as an individual, they listened and provided support. Although they didn’t always get everything right, I know that they tried hard and as a result benefit hugely from having an extremely loyal employee.”

If barriers exist to the recruitment and retention of transgender staff, employers miss out on this potential. We know that trans people often leave their jobs before transitioning and often take lower paid jobs when they return to the workplace, often because of the possible discrimination they imagine they will face if they stay in their place of work. This can result in a loss of expertise and investment for their original employer. A more inclusive environment would retain the skills and expertise of that employee.

Recruitment

It is in an employer's interest to secure the best possible applicants in order to gain or retain competitive advantage or be able to offer the best possible service. We know that significant barriers exist for trans people seeking employment but there are various steps that employers can take to:

- Be thought of as a “good employer” within the trans community;
- Attract applications from suitably qualified trans job seekers;
- Ensure that the recruitment processes do not present barriers to trans applicants; and
- Ensure that recruiting managers respond to, and assess trans candidates appropriately.

Website and brand

Most job seekers will check the website of prospective employers to get a picture of what it would be like to work there, so you may wish to consider how you present yourself as a diverse employer in order to attract the widest pool of applicants. Statements about values and culture are really important but these need to be backed up with activities and plans, and this is true for all groups. Examples include:

- Show how you understand the business/service benefits of having an inclusive and diverse workforce.
- Include a statement about your values.
- Be aware that LGB (lesbian, gay, bisexual) issues are not necessarily the same as trans issues.
- Talk about challenging transphobia as well as homophobia and biphobia,
- Make your inclusion plans and HR policies accessible, including any trans policy you may have.
- Encourage your networks to write about what they are doing.
- Mention the wider partnerships you might have with other organisations - including trans-related charities.
- Give people the confidence to consider you as a prospective employer.

Application process

There are a small number of issues that are relevant to trans applicants which represent minor, but important, amendments to standard application processes.

Application forms

It can help to be flexible to let people identify their gender as they choose so where organisations ask for titles, you may want to provide 'other' as an option.

For some people providing previous names may be problematic, so ensure that where you do need information, it is asked for in a sensitive way and that it is stored and treated in a secure manner.

Security and vetting

Certain jobs require security vetting, for example the requirement for a Disclosure and Barring Service (DBS) check. This must be disclosed to candidates at an early stage of the process with signposts to further information. There is a confidential DBS process specifically for trans applicants, who should contact the DBS sensitive applications line on 0151 676 1452 or email sensitive@dbs.gsi.gov.uk for further advice about completing the form.

Genuine Occupational Qualifications

Very occasionally, there may be genuine occupational factors that legitimately restrict applicants. This is known as a 'Genuine Occupational Qualification' (GOQ).

Very careful consideration should be given before applying a GOQ. Such restrictions are rare and, if wrongly applied, unlawful. The Equality and Human Rights Commission (EHRC) provides advice for employers on the use of GOQs (under occupational requirements in the [Employment Statutory Code of Practice](#)).

Equality monitoring forms

Equality monitoring is a very important part of a recruitment process because it tells employers whether they are attracting a diverse range of applicants. It also shows whether there are any issues within the process that are preventing certain groups from progressing through the selection process to appointment, or from advancing through the organisation on promotion.

It is usual practice to gather monitoring information such as ethnicity, faith and sexual orientation and it is possible to also collect information on gender identity.

Employers will have standards and practices in relation to the management of the information of these forms that typically involve an anonymous submission, unconnected with the application form/CV, which is stored separately for analysis and reporting and not available to short-listers or the interview panel.

Monitoring forms could explain why the range of questions are being asked, how the information will be used and stored, the standards of confidentiality that apply and the

fact that completion of the form is discretionary. It must be clear that if candidates decide not to complete the monitoring form, this will not have any impact on their application for the job.

By asking appropriate questions about gender identity and trans status on these forms, employers can send a signal that they are serious about equality, diversity and inclusion. Although the “T” is often included with LGB in relation to networks, employers should ask about gender identity in a separate question from one about sexual orientation.

For example, employers could ask, ‘Please tick here if your gender is different from the sex you were assigned at birth’. This can enable trans people who have a clear male or female identity to choose male or female, but also let you know they are transgender. This is likely to need a little supporting explanation. It is also good practice to include an option of ‘prefer not to say’.

Employers should recognise that collecting certain data will present some risk in relation to confidentiality. It may be possible to identify trans individuals within a very small workforce, for example if the data shows that one person in a workforce of 20 is trans. As with all personal information, employers should treat this information sensitively and securely.

Human resources (HR)

Employers may wish to ensure that HR (or any part of the organisation that may have a need) has sufficient knowledge and awareness of transgender issues and could also consider, where appropriate, identifying a point of contact in HR for any potential trans applicants, should they wish to make contact. This arrangement would be beneficial to both applicant and employer:

- The applicant gets access to someone who knows how to deal with specific issues (such as the names on documentation not matching up); and
- The employer has the reassurance that they are minimising any barriers to high quality candidates and, also, that their systems will not contravene the legal requirements in relation to disclosing someone’s trans status inappropriately.

Smaller organisations could seek support from external specialists such as those listed at the end of this guidance.

The interview/selection process

The principles of good recruitment practice apply at interview. Recruiting managers could receive training and ongoing refresher training on best practice, the employer’s recruitment and equality policies and the law. Managers also need to be able to “sell the benefits” of the job in terms of the support that is available to all staff through an inclusive culture and networks, for example.

Candidates may not wish to disclose their trans status at interview and it is not a question that should be asked, any more than questions about race or religion should be asked. It is best not to assume someone's gender simply by their appearance.

In some circumstances, candidates may advise a recruitment panel that it is their intention to transition. In such circumstances recruiting managers could:

- Thank the candidate for their openness;
- Explain that if appointed the employer will support the individual; and
- Remain focussed on the purpose of the interview, i.e. does this person have the skills and experience for the job.

“At the end of my interview, I was asked if I had any questions or wanted to add anything. I plucked up my courage and told the panel that I intended to transition very soon. The chair of the panel's jaw dropped, he looked at the HR rep and said, “One for you, HR”, but immediately recovered himself and said, “I don't care if you are a man or a woman (he included a range of other characteristics to make his point). All I care is that you can do the job”. He got there in the end although it would have been better if his response had been well informed and more professional.”

Job offers and documentation

All offers of employment involve identity and documentation checks. Sometimes, the names on a trans person's documentation (such as passport, driver's licence, utility bills or qualification certificates) do not tally. Ideally, trans candidates should have access to a nominated person in HR who is knowledgeable and available to deal with the documentation sensitively. This will involve retaining only what is needed, ensuring that the data is held securely and that there is no informal sharing of this information as this could be unlawful.

Induction

Once the trans person commences work, the lead should be taken from the individual about whether their trans status is discussed. Reference should be made to the requirements of relevant policy (such as dignity at work).

The new starter may be happy for *particular* colleagues to know they are trans but not others. Even if someone appears to open up about their trans status, it must always be their decision about who to share this information with. Revealing someone is trans (“outing” them), could place them at risk of discrimination, and violate their right to privacy. It may also be an offence under the Gender Recognition Act 2004 that carries a potential fine.

Retention

Businesses and organisations need to retain their skilled and experienced staff. They need to see the return on the investment of recruitment and training and be able to maximise the positive impact of the employee's experience, abilities, professionalism and creativity.

If people are unhappy, feel marginalised or experience discrimination, there is a risk of grievances or complaints or even that the organisation may lose a valued employee.

Effective retention strategies address these avoidable costs to the organisation.

This section of the guidance covers organisational strategy and retention advice relating to individual issues that managers will need to consider.

Retention - individual issues

This section addresses the retention of people who are considering or planning transition, are transitioning or have transitioned.

Managers need to listen and agree the approach that suits the business and the transition individual. Although this section addresses a series of practical issues and approaches, no two situations are the same.

Before transitioning – making a plan

Because of the general lack of awareness in relation to gender identity issues in the workplace, it can be an extremely difficult step for someone to approach their manager to tell them that they are planning to transition. Often individuals do not know what the manager's response will be or how the organisation or business would deal with the news.

These concerns can be offset if the employer has an inclusive approach and a culture that values difference.

However, the key issues for managers at this early stage are:

- Listen, show support, discuss levels of confidentiality, agree to seek advice and agree to work in partnership. The process should be led by the individual as much as possible.
- Take advice from the HR, inclusion and diversity team or one of the organisations listed at the end of this guidance.
- Understand that individuals could have a range of experiences or objectives. Some people prefer as few people as possible to know about their transition and decide to discuss this with their manager but require no further action. Others may be planning a medical intervention and others may prefer transition that does not

involve any medical intervention or surgery. The key thing is that managers need to adopt an approach that meets the needs of the employee.

- Agree with the member of staff what steps need to be taken before, during and after their transition. Some people refer to this as developing an agreement or an action plan. A suggested template for such a plan is at page 28 of this guidance.
- A series of review meetings should be scheduled, at an agreed frequency as part of any action plan, and at any significant stage of the process (fortnightly/monthly).
- The plan should be updated and developed, not fixed.
- There should be an agreement about where the plan or any meeting notes are kept and who has access.

A trusting and open relationship between the trans employee and the manager and HR is really important. This should involve joint problem-solving (such as anticipating and planning for any problems), confidentiality, reliability (doing what you say you are going to do) and empathy (providing support).

“When I first became the Store Manager where Paul worked, he was living as a male, transitioning from female. I decided not to approach Paul about it, but to wait for a while to see if he wanted to talk to me about it. As he was one of the supervisors reporting to me, I developed a good relationship with him after a few weeks, and talked at length with him about his development potential and supporting his progression. At this point he asked to talk to me. He confided in me his situation, and was really open about what he was going through. He explained that although he really did want to progress, that there was only a certain amount of things he could deal with and he felt it would be too much for him.

“I agreed to support him by keeping him in a department he was confident in, and of course allowing for him to attend appointments. He had a very supportive manager, and had built a great relationship with the all-male team in his department, which was also important to him. Paul asked me not to treat him specially, but to just be aware of his situation, and to try to understand. He was really open and willing to answer questions, which encouraged me outside of work to research as much as I could about his situation.

“Over the following nine months, Paul needed support from us all at the store. He needed supporting when his appointments at the gender clinic were postponed or cancelled. We supported him when he first started getting his hormone injections, which caused him physical pain and discomfort. He had highs and lows. If things got too much for him, especially in his customer-facing role, we allowed him time away from the shop floor. He didn't get special treatment; he just got some additional support and understanding from all of us.

(continued...)

“When I arrived at the store he was using the First Aid room for his locker, as the previous management was unsure of what to do. I knew he should be in the male locker room, and shortly after him completing the period of living as a male for two years, we moved him into the male changing rooms, and dealt swiftly with the two colleagues that complained about it. I specifically didn’t treat Paul any differently, but I did respond to his individual needs. I also became super-sensitive to any language or behaviour from the rest of the store team, and ensured that he was always referred to appropriately. It was the small things that mattered, that all added up to a culture of support.”

There are a series of practical considerations, (some of which have legal implications) that managers should address:

- **Dates and timescales** – when key changes will take place and how they fit with any relevant work deadlines. These key changes will vary depending on the individual but could include name, documentation, physical changes or short term or permanent role changes. Practical issues relating to the availability of key people to support the process, shift patterns etc. could be considered.

“We decided to tell people during the period between Boxing Day and the New Year, as it was a quiet time for the business, yet almost everyone in my team would be in work.”

- **Records and systems** – what needs to be changed, when this will happen, what will happen to “old” records? This includes photographs/biographies etc. on company websites through to historical information on personal records (such as a reference to a previous period of maternity leave for a transgender man). Payroll and National Insurance details may also need to be adjusted so it is essential that where other people in the organisation need to be aware, this is within an informed context.
- **Communication with colleagues** – managers should encourage the individual to describe what they think will be best for them. This could be a verbal communication at team meetings or on a 1:1 basis, the trans person could be present or absent, it could be an electronic communication. The person may not be ready to tell anyone else at the early stages and if that is the case, this should be respected. Every situation is different but the communication needs to provide some general awareness-raising and also address issues specific to the individual. Colleagues need to be able to ask questions and managers must set a tone of absolute inclusion and respect. This communication will need to be practical and address important issues such as how to address the trans colleague (new name, correct pronoun), how to support the colleague, how to deal

with questions that may come from outside the team without breaching confidentiality etc.

“The HR manager told my supervisor in a private meeting in which I was not present. My supervisor was very sympathetic and, together, the three of us developed a plan for telling colleagues.

I spoke to a senior manager who said she would be willing to tell my colleagues. I prepared a document that she would read out. I said that it would be better for me not to be present at the meeting, but be available in the building to answer any immediate questions.”

- **Use of facilities** – 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.
- **Absences from work** – there may be absences for medical reasons and other appointments associated with the transition process which should be recorded, but not used in relation to any absence management process i.e. they should be regarded as a short-term reasonable adjustment.
- **Short-term job change** – may be appropriate in some cases. This can only be in agreement with the trans employee and employer.
- **Pensions and insurance** – financial services organisations will have systems in place to manage data stored about trans contributors. When dealing with other agencies, care should be taken to ensure information is only shared on a “need to know” basis with those responsible for records/policies.
- **Communication with customers/clients** – the need for this will vary depending on the employer’s business. Include your employee in considering how best to communicate the information. This may need to include a plan to deal with media interest.
- **Respect and try to accommodate requests for anonymity** – if it is wanted. Transitioning can be a difficult process and trans colleagues may not want any attention, preferring relocation for example. Any change like this must be led by the trans employee working with their employer.

Managers need to take their lead from the trans employee in relation to the frequency and type of support that is provided during and after transition. There are some general points that should be considered:

Bullying

Any instances of harassment or bullying should be treated with the same degree of seriousness as other instances of bullying in the organisation. Employers should be aware that subtle bullying, such as excluding people from distribution lists, or persistent use of the wrong pronoun (she, he) can be very undermining and must be identified and addressed.

Questions

Never let natural curiosity about trans issues override sensitivity and respect. If staff have questions, direct them to reputable resources e.g. guidance and websites such as those listed at the end of this guidance.

Anonymity and checking details

Ideally, employers should maintain a complete list of all the systems (electronic and paper) that hold personal data or references to any individual employee. This could range from HR systems through to stand alone roster systems; they could be centralised systems or remote databases. It is essential that trans employees are not “outed” due to old data emerging from such a system.

Someone must take responsibility for checking that agreements in relation to information and records have been fulfilled. Double check the online and paper records, website etc.

“I have heard horror stories of an old HR system producing a report that showed a period of maternity leave eight years ago for a trans man (which effectively ‘outed’ him) and a trans colleague getting locked out of the IT system but the help desk could only re-set the access with the person’s previous details including their pre transition name. No one had made all the proper system checks.”

Networks

Employees’ networks are often referred to as “LGBT” networks. Sometimes the “T” (transgender) is added without any real thought as to what this means in practice, so employers should ensure that networks are adequately equipped to support trans people.

Strong networks are an indicator of a supportive employer and in reality offer a really practical support system where colleagues can seek help, offer help and avoid isolation. Most large employers with networks have an LGBT (lesbian, gay, bisexual, and trans) network. These groups are run by members of staff, for members of staff with the support of the employer.

Maintain contact

At some point, the trans employee may no longer want or need specific support from their manager in relation to their gender reassignment. Communications will revert to the usual management interventions. It is important that managers do not make any assumptions about this and should agree when employer support around the transition is complete. Some colleagues may want a longer period of support and may request different support at different times of their transition, such as counselling. Managers should be aware that sometimes transition results in personal or family relationships breaking down temporarily or permanently and the workplace can offer a place of stability during difficult times.

“We talked regularly, I met with an appointed HR Manager, initially every week, then fortnightly and then monthly over a period of a year. Having a HR manager as a point of contact served to illustrate [my employer’s] commitment to getting it right and also meant decisions and any issues raised could be dealt with or made immediately.”

Post transition

When people complete their transition, some people may consider this part of their history that has now been resolved. In such cases, they will simply describe themselves as a man or woman, and so should their employer.

“I transitioned three jobs ago and the transition feels like ancient history to me. I am in a sought-after profession and my experience is that employers just treat me as any other employee... but one they really need to retain for my expertise.”

References

When asked for a reference for a trans person, the usual principles of fairness and accuracy apply. If asked for a reference from someone who has transitioned since leaving your employment, it is advisable to make direct contact with the ex-employee to discuss the reference. Clearly the content of the reference in terms of capabilities, experience etc. will be the same but care must be taken around the use of pronouns and names.

Retention - strategic issues

There are organisation-wide cultural factors that will aid retention and also a series of practical interventions.

For all of these groups, there are some important cultural factors that will aid retention.

Culture, values and awareness

Employers that actively promote a culture of dignity and respect are more likely to successfully recruit and retain trans staff. This would involve being explicit about inclusion and the behaviour and approaches that go with an inclusive approach. The values and culture could be supported by clear policy statements and procedures (where appropriate) which are linked to business objectives. People need to understand the business/service benefits of an inclusive approach.

Leadership

Clear and consistent leadership is central to helping everyone respond to transition in a positive and supportive way. This can relate to:

- employment culture (value and respect for all individuals);
- management standards (addressing problems as they arise); and
- communication processes (balancing openness with confidentiality as appropriate).

“With a largely male and heterosexual workforce, coming out as trans after almost ten years working with these people was always going to be a challenge. The nature of the work means the crews form close-knit bonds very quickly, and these are rarely broken.

As a member of the management team I was aware of this culture as was my employer. The key for my employer was to ensure that my transition was managed from the very beginning from a position of equality, intolerance of discrimination and bullying and to provide support to me as an individual and as an educator to staff who had never come across trans issues. They needed to show strong leadership from HR to ensure all department managers understood what transition meant, they needed to provide information to staff and more importantly ensure they understood the information and they needed to make sure their policies and procedures were up to date, trans-inclusive and fit for purpose. For me though, the key way they showed leadership was they listened. They listened to me, to staff and colleagues who simply didn't understand nor had any experience, to the trade unions and they listened to medical advice.

By doing all this they were able to portray good leadership, that this was something important, to get right and to allow me to get on with my job.”

Learning and development

Inclusion, diversity and equality and human rights training for all staff establishes the organisation's culture, setting and maintaining standards and allowing all staff to be themselves at work. In addition, managers should be supported in their roles through effective management development programmes.

Employee assistance programmes (EAP)

These contracted-out services generally offer 24-hour telephone support to employees on a wide range of issues including counselling support. Employers may consider checking the trans-friendly credentials of their EAP.

Role models

A diverse workforce will generally be a more comfortable environment for minority staff groups including trans colleagues. Trans employees generally will not want to be the centre of attention; however, sometimes colleagues are happy to be seen as role models in order to give others confidence about transition at work.

Mentors

Mentoring is a relationship in which a more experienced colleague uses their greater knowledge and understanding of the work or workplace to support the development of a more junior or inexperienced member of staff. Mentoring relationships work best where there is a learning opportunity for both parties. This is particularly productive when used to encourage inclusive working practices; for example, where a senior leader mentors a more junior colleague, where both individuals or just one individual is trans. Reverse mentoring (where a more junior colleague mentors a senior leader) can also be effective in encouraging sharing and learning across generations and/or between role levels.

Champions

Some organisations identify "champions" of particular protected characteristics from amongst the senior management team. This role helps to develop awareness amongst the wider staff group, in order to develop a more inclusive working environment.

Legal Framework

The Equality Act

The Equality Act 2010 consolidated and replaced existing equality law including the Sex Discrimination Act 1975 with a single Act. The Equality Act 2010 provides protection from discrimination in respect of people who have what the Act describes as the protected characteristic of gender reassignment. It states:

A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

The Act defines nine “protected characteristics” which are age, disability, marriage and civil partnership, pregnancy and maternity, race and ethnicity, religion or belief, sex, sexual orientation and gender reassignment. The Act provides protection from discrimination in relation to these protected characteristics in a range of areas including the provision of services and employment.

No employment decision (for example, relating to recruitment, promotion, pay and benefits, training, discipline and dismissal including redundancy) based on one of these characteristics is likely to be lawful (with a few minor exceptions).

This means that the same balance that managers apply to decisions relating to gender or disability for example, must also be applied in decisions relating to the recruitment and employment of staff who possess the characteristic of ‘gender reassignment’.

The legislation makes clear that it is not necessary for people to have any medical diagnosis or treatment to gain gender reassignment protection; it is a *personal* process of moving from one’s birth gender to the preferred gender.

Employers can be held responsible for the actions of their staff under the Act (even if it is without the employers’ knowledge or approval). Employees are also individually responsible for their own discriminatory actions.

Practical steps to limit the risk of discrimination are included elsewhere in this guidance and managers should carefully consider learning and development options for their staff.

The Act provides protection from discrimination in the following circumstances (these case studies are trans-specific - where someone possesses the characteristic of gender reassignment or is perceived to possess the characteristic – but the principles apply to all nine protected characteristics).

Direct discrimination

This means treating someone with a protected characteristic less favourably than other employees.

Example:

The best applicant for a vacancy has the protected characteristic of gender reassignment and is not offered the job because the recruiting manager does not feel comfortable about working with trans people. This is direct discrimination because of gender reassignment.

Direct discrimination by association

This means treating someone less favourably than other employees because of their association with someone who has the characteristic of gender reassignment.

Example:

When someone is excluded from work activities because they have a transgender spouse, this is direct discrimination by association.

Direct discrimination by perception

This means treating someone less favourably than other employees because of a perception of gender reassignment.

Example:

Where someone is refused a job because they are perceived to be transgender even though they are not, this is direct discrimination by perception.

Indirect discrimination

This can occur where there is a policy, practice or procedure that applies to all workers, but particularly disadvantages a particular protected group such as people who intend to undergo, are undergoing or have undergone gender reassignment.

Example:

If people have to comply with a policy or procedure that forces individuals to disclose that they have undergone gender reassignment, this is an example of indirect discrimination – such as in some circumstances, needing to provide an original birth certificate.

Harassment

This can occur when unwanted conduct related to gender reassignment has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Victimisation

This is the unfair treatment of an employee who has made or supported a complaint about gender reassignment discrimination.

Example:

When someone is ostracised by colleagues having given evidence in a grievance case where a trans colleague has been bullied. This could be victimisation due to gender reassignment.

Also, section 16 of the Equality Act has specific provision to protect the right of trans employees to have time off work for reasons relating to their gender reassignment. An employer will be discriminating against the trans person if they would treat another person who is absent from work due to illness or injury more favourably.

The Equality Act 2010 does not apply to Northern Ireland. Gender reassignment protection in employment is provided by the (Gender Reassignment) Regulations (Northern Ireland) 1999.

Public sector duties

The Equality Act 2010 requires that public bodies have due regard to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act

(including discrimination by association or perception), to advance equality of opportunity between persons who share a protected characteristic and those who do not, and to foster good relations between persons who share a protected characteristic and those who do not.

Service providers

Separate guidance is available in relation to the provision of services. However, employers have a duty to take reasonable steps to protect their trans staff from harassment.

The Gender Recognition Act 2004 (GRA)

This legislation allows trans people (aged over 18) to change their legal gender. The Act gives trans people the right to obtain a new birth certificate, affording them recognition of their acquired gender in law for all purposes.

However, whether or not a person has a Gender Recognition Certificate (GRC) should have no bearing on their employment or employment protections, apart from providing an extra layer of privacy. Employers should treat people in accordance with their gender identity, whether or not they have a GRC and should not ask trans staff if they have one.

The Act requires applicants to satisfy the Gender Recognition Panel (a judicial body of lawyers and doctors) that:

- they have or have had gender dysphoria;
- they have lived in the acquired gender for two years prior to the application; and
- they intend to live permanently in the acquired gender.

Following a successful application, a trans person will be recognised as being a person of their acquired gender with all the legal implications which flow from this.

The Act also includes important measures to protect privacy. The Act makes it a criminal offence for a person who has acquired protected information (information which relates to a person's application for a GRC or information which identifies a person with a GRC as transgender) in an official capacity (such as through a recruiting process) to disclose the information to any other person. The offence does not apply if the individual has agreed to the disclosure of such information or in certain prescribed circumstances (such as disclosure being for the purpose of preventing or investigating crime). Section 22 of the GRA sets out the circumstances under which such information may be disclosed lawfully.

Not all trans people apply for a GRC. There may be a number of reasons for this including health, personal and family reasons.

Employment rights do not depend on whether a person has a GRC. Employers should not ask for a person's GRC and it should never be a pre-condition for transitioning at work.

Exceptions to normal recruitment practice

Very rarely, it is an occupational requirement of a role is that it is done by someone of a particular sex. This is called a Genuine Occupational Qualification. In order to claim this, the employer must show that applying the requirement is a proportionate means of achieving a legitimate aim.

Other legislation

The wide range of other legislative provision which relates to gender identity includes:

- Pensions Act 1995
- Employment Rights Act 1996
- Protection from Harassment Act 1997
- Human Rights Act 1998
- Data Protection Act 1998
- Civil Partnership Act 2004
- Marriage (Same Sex Couples) Act 2013.

Glossary

Terms and language regarding transgender people and transgender issues are evolving rapidly and many terms may mean different things to different people. The definitions given here are common, but not universal, understandings of these terms.

Acquired gender

The law uses the phrase 'acquired gender' to refer to the gender in which a transgender person lives and presents to the world. This is not the gender that they were assigned at birth, but it is the gender in which they should be treated.

Cross-dresser

Someone who wears the clothes usually expected to be worn by someone of the 'opposite' gender. Other terms include 'transvestite' (now becoming a dated term and disliked by some) and 'dual role'. A cross-dresser is unlikely to have a full-time identity as a member of their cross-dressed gender and typically does not seek medical intervention.

Gender binary

A binary system allows only two things or states – for example, on/off. In terms of gender, it refers to the either/or categories of male/female that do not allow for, or recognise, other experiences of gender.

Gender dysphoria

Transgender people who seek medical intervention are typically diagnosed with 'gender dysphoria' as a first step. Gender dysphoria describes the sense of a strong, persistent discomfort or distress caused by the dissonance between a person's self-identified gender and the gender they were assigned at birth.

Gender identity

A person's sense of self as a man, woman, non-binary person or other sense of gender. A person's gender identity is typically expected to follow directly from the sex they were assigned at birth (based on physical attributes), but this is not always the case.

Gender reassignment

The process of changing or transitioning from one gender to another.

Gender Recognition Certificate (GRC)

A certificate issued under the Gender Recognition Act¹ which enables trans people to be legally recognised in their acquired gender.

¹ GOV.UK website: Applying for a Gender Recognition Certificate

Mis-gendering

You mis-gender someone when you refer to them using a word, especially a pronoun or a form of address, that does not correctly reflect the gender with which they identify.

Non-binary person

Someone who does not subscribe to the customary binary approach to gender, and who may regard themselves as neither male nor female, or both male and female, or take another approach to gender entirely.

Real life experience (RLE)

Sometimes called the Real-Life Test (RLT), this is a period of time in which trans individuals live full-time in their preferred gender role. The purpose of the RLE is to confirm that the person can function in their preferred gender successfully in society, as well as to confirm that they are sure they want to live in their preferred gender for the rest of their life. A documented RLE is a requirement of some doctors before prescribing hormone replacement therapy, and a requirement of most surgeons before performing gender reassignment surgery.

Transgender (or trans) person

A broad, inclusive term referring to anyone whose personal experience of gender extends beyond the typical experiences of those of their assigned sex. Amongst others, transsexual people, non-binary people and cross-dressers may all consider themselves transgender people.

Transsexual person

This term is most closely associated with the legally protected characteristic of 'gender reassignment'. A transsexual person may be 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. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person. Once a transsexual person has acquired a GRC, they should generally be treated entirely as in their acquired gender.

Transgender man

A transgender man is a female-to-male transgender person who was assigned female at birth but has a male gender identity.

Transgender woman

A transgender woman is a male-to-female transgender person who was assigned male at birth but has a female gender identity.

Transition

Taking the journey from your assigned gender to the one you know yourself to be. This may refer to social transition (changing name, clothes etc), medical transition (hormones and/or surgery) or both.

Action Plan Template

This type of template is a useful starting point to develop a plan. Questions and points to consider:

Who needs to know?

	Who will tell them?	When?	Date completed
HR Business Partner			
Senior Manager			
Line Manager (if not main point of contact)			
Others (please specify)			

Planning the future

Your new name (in full, if known)	
Your role	
Name of line manager	
Medical advisor (name/contact details)	

Telling colleagues/friends and people you work with/external partners

- Who will tell colleagues/partners?
- Will you be there?
- When will this take place?
- Where will this take place?
- What information will be provided?

Getting ready for your first day back

- When will this be?
- Change of role?
- Are you ready?
- Is your wardrobe/uniform ready?

- Are colleagues ready?
- Additional support for you and/or loved ones?
- Any media concerns?

Changing everything into your new identity

	Who will do this?	When?	Date completed
Name badge			
Business cards			
Website 'About Us' section			
IT systems			
Voicemail			
Intranet address entry			
Work-based social media			
Union membership			
Pensions scheme			
Uniform stores data			
Certificates/awards			

Medical appointments and absences

Reason	Dates

Details of meetings

Date	Comments	Actions	Date of next meeting

Useful sources of information and advice

www.inclusiveemployers.co.uk The UK's leading inclusion and diversity experts, working with employers to create inclusive workplaces.

www.scottishtrans.org The Scottish Transgender Alliance works to improve gender identity and gender reassignment equality, rights and inclusion in Scotland.

<http://genderedintelligence.co.uk/> Gendered Intelligence work predominantly with the transgender community and those who impact on transgender lives. They particularly specialise in supporting young transgender people aged 11-25.

www.gires.org.uk Gender Identity Research and Education Society provides information for trans people, their families and the professionals who care for them.

www.depend.org.uk Offering free, confidential advice, information and support to all family members, spouses, partners and friends of transsexual people in the UK.

www.gendertrust.org.uk The Gender Trust supports all those affected by gender identity issues.

www.clareproject.org.uk The Clare Project is a self-supporting group based in Brighton and Hove open to anyone wishing to explore issues around gender identity.

www.ntpa.org.uk The National Trans Police Association exists primarily to provide support to serving and retired Police Officers, Police Staff and Special Constables with any gender identity issue.

gender-matters.org.uk Wolverhampton based, Gender Matters provides a comprehensive programme of practical support, counselling, advice and information.

www.equalityhumanrights.com The Equality and Human Rights Commission seeks to identify and tackle areas where there is still unfair discrimination or where human rights are not being respected and to act as a catalyst for change. The EHRC also provide statutory guidance on the Equality Act for employers, which can be found here:

<http://www.equalityhumanrights.com/private-and-public-sector-guidance>

www.blgbt.org Supports the LGBT community in Birmingham.

www.northernconcord.org.uk Northern Concord is a Manchester based transvestite, transgendered and transsexual support and social group.

www.translondon.org.uk TransLondon is a discussion/support group for all members of the trans community, whatever their gender identity.

www.gayadvisedarlington.co.uk Offers free, confidential support, advice and drop in sessions to trans people at a full time LGBT centre.

www.transgenderwales.bravepages.com Supports transgendered people in Wales.

www.transgenderni.com Supports transgendered people in Northern Ireland.

Government Equalities Office (GEO)

GEO is responsible for equality strategy and legislation across government.

www.gov.uk/geo

Department for Business, Innovation and Skills (BIS)

BIS is the department for economic growth. The department invests in skills and education to promote trade, boost innovation and help people to start and grow a business. BIS also protects consumers and reduces the impact of regulation.

www.gov.uk/bis

Equality and Advisory Support Service (EASS)

EASS has a helpline that advises and assists individuals on issues relating to equality and human rights, across England, Scotland and Wales.

www.equalityadvisoryservice.com/

British Chambers of Commerce (BCC)

BCC is the national voice of local business and serves business members across the UK. The BCC is a voice for the interests of business, delivers services that help business grow, and is the private sector source of advice and support for international trade.

<http://www.britishchambers.org.uk/>



Government Equalities Office

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