

Gender Transition Guidelines

December 14, 2016

The Commonwealth of Pennsylvania is committed to diversity and inclusion in the workplace and provides equal opportunity in employment. Commonwealth policy dictates that all employees and candidates for employment be treated with dignity and respect and provided a workplace free from discrimination regardless of race, color, religious creed, ancestry, age, sex, sexual orientation, gender identity or expression, national origin, AIDS or HIV status, disability, or union membership¹.

On April 7, 2016, Executive Order 2016-04, *Equal Employment Opportunity*, issued by Governor Wolf, requires that agencies provide a non-discriminatory working environment to employees irrespective of their sexual orientation, gender identity or gender expression. The purpose of this document is to provide guidance to agency Human Resources (HR) and Equal Employment Opportunity (EEO) Offices on processes to provide support in the workplace to employees undergoing transition, to detail the protections in place for transgender and gender non-conforming employees, and to address some of the common questions that agencies have raised.

Agency internal anti-discrimination policies must be compliant with Executive Order 2016-04, *Equal Employment Opportunity*.

Because the guidance is general in nature, agency HR and EEO Offices should consult with the Office of Administration, Equal Employment Opportunity Division (OA, EEOD) to seek advice in individual circumstances.

In issuing this guidance, it must be emphasized that transgender employees have the right to be open or private about their gender-related history, to express their gender identity without fear of consequences, and to enjoy equal opportunity in all respects. While not all transgender individuals will follow the same steps to transition or have the same needs, all are entitled to a work environment free of discrimination. A successful transition in the workplace calls for respectful communication and understanding among all involved parties.

Definitions

Sex: the term which refers to the classification of people as male, female, intersex or another sex. At birth, infants are assigned a sex often based on physical anatomy.

Gender: refers to the behavioral, cultural, psychological, or social traits typically associated with one's sex, rather than biological characteristics.

Gender identity: An individual's internal sense of being male or female or both or neither regardless of sex assigned at birth.

Gender expression: appearance, mannerisms, and other personal behaviors or characteristics to communicate masculinity, femininity or androgyny. Examples include clothing, communication patterns, hairstyles, and voice or body characteristics. A person's gender expression may or may not be consistent with socially prescribed gender roles, and may or may not reflect an individual's gender identity.

¹ Executive Order 2016-04, *Equal Employment Opportunity*

Sexual orientation: a person's sexual or emotional attraction to other people. Heterosexuality, homosexuality or bisexuality are all sexual orientations. A person's sexual orientation is distinct from a person's gender identity and expression.

Transgender: An individual whose gender identity is different than the sex assigned at birth. Someone who was assigned the male sex at birth but who identifies as female is a *transgender woman*. Likewise, a person assigned the female sex at birth but who identifies as male is a *transgender man*. Some individuals who would fit this definition of transgender do not identify themselves transgender; rather, they identify simply as men and women, consistent with their gender identity.

Gender Transition or Transition: The process or time period when individuals begins to live consistent with their gender identity. Transition may involve changes in name or gender pronouns, hormone therapy, mental health support, or surgical procedures, however none of these steps are required.

Nonbinary or Genderqueer: Terms that refers to individuals who do not identify or express their gender within the gender binary of male or female. *Nonbinary* or *genderqueer* people may or may not identify as transgender.

Commonwealth Resources and Roles

Human Resources (HR) Office: Each agency has a HR Office, which will assist employees during the transition process (including name change, benefits questions, communication within work place, etc.).

Equal Employment Opportunity (EEO) Officer: Each agency has an EEO Officer, who will ensure that the Commonwealth's non-discrimination policies are applied to the transitioning employee.

Office of Administration, Equal Employment Opportunity Division (OA, EEO): The OA Division available to provide additional guidance and answer agency questions regarding implementation of these guidelines. Any questions should be directed to OA, EEO at 717-783-1130.

Leave Administration: Commonwealth personnel designated to respond to questions and provide assistance regarding leave, including but not limited to sick and annual leave, Sick, Parental, and Family Care (SPF) or Family Medical Leave Act (FMLA) leave, for which the transitioning employee may be eligible.

Insurance Benefits: All questions regarding health benefits should be directed to the HR Service Center at 1-866-377-2672.

State Employee Assistance Program (SEAP): Employees in participating agencies are eligible for SEAP benefits that may be used to help support employees and family members with personal issues, including those related to transition. SEAP can be reached at 1.800.692.7459.

Transitioning While Employed

All employees who are changing gender expression or are transitioning will be provided support and treated consistent with Commonwealth nondiscrimination policies. There are several issues that commonly generate questions from managers, supervisors and employees who are working with a transitioning employee. In order to assist HR and EEO offices, we offer the following guidance on those issues:

Workplace Transition Plan: No employee is required to utilize a workplace transition plan or to give advance notice of an intended gender transition to the employing agency. If a transitioning employee chooses to work with the HR Office, it is recommended that a transitioning employee, together with their supervisor and the agency's HR representative, develop a workplace transition plan (Plan) outlining the steps to be taken to provide a successful transition.

The Plan can include:

- The date on which the employee would like to assume the new gender identity at work;
- What administrative changes are required to support the gender transition, such as ID badges, email identification, name changes (official or unofficial);
- Who will be told of the transition and the manner in which coworkers, clients, and others in the workplace will be made aware of the transition; and
- When the announcement will be made.

Confidentiality and Privacy: An employee's transition should be treated with as much sensitivity and confidentiality as the employee prefers. Employees in transition often want as little publicity about their transition as possible. Employees may or may not disclose medical information with HR staff during their transition. Although this disclosure is not covered under the Health Insurance Portability and Accountability Act, agencies must treat this information as if it were. As such, any information disclosed by the employee cannot be shared with other staff without permission. Agencies should have no written records containing medical information unless the records are required for the administration of leave, other benefits, or for compliance with the Americans with Disabilities Act.

Questions from coworkers or others regarding an employee's transition should be referred to the employee or to a person whom both the agency and the employee agree to designate this responsibility. It should be emphasized in the workplace that questions regarding an employee's medical procedures, body, and sexuality are inappropriate.

The transgender status of any former employee shall not be disclosed to subsequent employers when responding to a reference request or background check.

Dress and Appearance: All employees must adhere to the dress norms and grooming standards consistent with their gender identity or expression.

Name and Pronoun Usage: All employees are to be addressed by the name and pronoun of their preference. Further, managers, supervisors, and coworkers should take care to use the correct name and pronouns in employee records and in communications with others regarding the employee. Because most people have not been exposed to gender transition, it is likely that co-workers will make mistakes, such as referring to the employee in gender transition by the wrong name or pronoun, or asking inappropriate questions. Employees in transition should correct a co-worker who makes a mistake. If, after a reasonable period of time, an employee or employees continue to address the employee who is transitioning by the wrong name or pronoun or asks inappropriate questions, the agency HR Director or EEO Officer should be notified. Continued intentional misuse of the employee's new name and pronouns, and reference to the employee's former gender by managers, supervisors, or coworkers is unacceptable and may constitute harassment or create a hostile work environment. Such misuse may be a violation of commonwealth anti-discrimination policies.

Name Changes on IDs and Records: As soon as an employee provides documentation to the agency of a legal name change, the HR Office will initiate action to change the employee's records to reflect the employee's new name by contacting the HR Service Center, Agency Services Manager.

In the event the employee directly contacts the HR Service Center, Employee Services Division requesting a name change, the HR Service Center will follow its procedures, which require the employee to provide appropriate documentation to support the legal name change.

If an employee's preferred name does not match the individual's legal name; the preferred name should be used on non-legal documentation such as e-mail, telephone directory, online name references, identification badge, name plate, business cards, etc. The employee's legal name must be used on legal and tax-related records, such as on payroll and insurance documents.

Gender Changes on IDs and Records: As soon as the employee notifies the agency of a gender change, the agency will promptly initiate action to change the gender in the employee's records by contacting the HR Service Center, Agency Services Manager.

In the event the employee directly contacts the HR Service Center, Employee Services Division requesting a gender change, the HR Service Center will process the gender change upon the employees' request.

No documentation is required to support a gender change in SAP.

Sanitary and Related Facilities: Employers are required to make access to adequate sanitary facilities including, but not limited to, restrooms, locker rooms, showers, etc., as unrestrictive as practicable for all employees in order to avoid serious health consequences. All employees, including transgender employees, are to have access to sanitary facilities that correspond to their gender identity, and no documentation is required to access facilities. Any employee who has a desire for additional privacy, including any non-transgender employee who does not want to share a multi-person facility with a transgender coworker, shall be provided with a reasonable alternative arrangement. During transition, an employee makes the decision of which facility is appropriate for them. Nonbinary people should use whatever facility in their judgement is most appropriate for them.

Workplace assignments and duties: Most often, specific workplace assignments and duties cannot be differentiated by gender. For a transitioning employee, once he or she has begun working full-time in the gender that reflects his or her gender identity, agencies should treat the employee as that gender for purposes of all job assignments and duties. Transitioning employees should not be required to have undergone or to provide proof of any particular medical procedure (including gender reassignment surgery) in order to be eligible for gender-specific assignments or duties. Some agencies, such as the Department of Corrections and the Department of Human Services, may need to adapt these guidelines to comply with state or federal laws that require gender specific assignments. No agency may make or limit gender-specific assignments or duties unless gender has been established as a Bona Fide Occupational Qualification (BFOQ) for a specific position.

If another employee, contractor, vendor or customer requests to not work with the transitioning employee because of the employee's gender identity or expression, such a request cannot be honored. Agencies cannot subject employees to adverse employment actions based on gender identity. Therefore, an agency cannot honor a request to isolate the employee from certain other individuals. Those who choose to work with the agency must abide by the Commonwealth's policies. In such a situation, the HR Director or EEO Officer may be able to provide guidance or training to the requester regarding the Commonwealth's nondiscrimination policies.

Sick and medical leave: Employees receiving medical treatment as part of their transition may use sick leave under applicable regulations. Employees who are qualified under SPF or FMLA leave provisions may also be entitled to take medical leave for transition-related needs of their families.

Hiring process

During the hiring process, HR offices, hiring managers and supervisors should be sensitive to the possibility that applicants have transitioned. The name and gender on the application may correspond with the person's gender expression; however, background or suitability checks may disclose a previous name that indicates a gender different from the applicant's current gender expression. In such cases, hiring managers should respectfully ask whether the applicant was previously known by a different name for background check purposes only, and confirm with the applicant the name and gender that should be used throughout the hiring process. Any information in a background check that indicates a previous name or gender change cannot be used against an applicant. Be aware that gaps in job histories and missing references can be due to transition time and/or discrimination.

Equal Opportunity and Harassment

Transitioning employees have the right to experience a workplace free of discrimination, including harassment. Commonwealth employees are protected from discrimination under Executive Order 2016-04, *Equal Employment Opportunity*, on the basis of sex, sexual orientation, and gender identity or expression. If an employee believes they have been discriminated against on any of those bases, the employee has a right to file a complaint of discrimination under Management Directive 410.10, *Guidelines for Investigating and Resolving Internal Complaints of Discrimination*. Additionally, if an employee in transition (or who has transitioned) has been subjected to harassing conduct that is related to their gender identity or expression, the employee has a right to file a complaint alleging sexual harassment as per Management Directive 505.30, *Prohibition of Sexual Harassment in Commonwealth Work Settings*. Any complaint should follow the procedures laid out in Management Directive 410.10 and Management Directive 505.30, both of which outline the procedures for the filing and investigation of discrimination and sexual harassment complaints.

Addressing Co-Worker Concerns/Training

If the employee is willing, the agency HR Office, in conjunction with the employee who is transitioning, should develop a plan regarding how and when to advise co-workers of the employee's transition. Efforts to notify co-workers of the change, including that of name and identity, should be made in close proximity to the employee's transition at work. Information on the transitioning process should also be provided to employees as necessary. Whether this will be done with employees one-on-one or in larger group settings is at the discretion of the employee and the agency. Agencies should contact OA, EEOD with specific questions regarding training options. Education can be beneficial toward eliminating tension and mistrust and ensuring a productive workplace where all are treated equally.

An employee's transition can be a challenging process. Managers and supervisors are integral to the process as part of their overall responsibilities are to ensure that employees work together productively and treat one another with dignity and respect in order to prevent discrimination. HR and EEO offices must ensure that managers and supervisors are equipped with the appropriate information to answer questions and address concerns that employees may have regarding the process and to remind all employees that they are expected to conduct themselves in accordance with commonwealth policies.

Contact the Office of Administration, Equal Employment Opportunity Division for questions or concerns related to this guidance.