

Gender Transition Guidelines

June 1, 2023

The Commonwealth of Pennsylvania is committed to diversity and inclusion in the workplace and to equal opportunity in employment. Commonwealth policy dictates that all applicants for employment and employees be treated with dignity and respect. Commonwealth policy further dictates that all employees work in an environment free from discrimination based upon race, color, religious creed, ancestry, age, sex, sexual orientation, gender identity or expression, national origin, AIDS or HIV status, disability, or union membership.¹

Executive Order 2016-04, *Equal Employment Opportunity*, requires that agencies provide a non-discriminatory working environment to employees irrespective of their sexual orientation, gender identity, or gender expression. In addition, Executive Order 2021-04 *Prohibition of Sexual Harassment in the Commonwealth* prohibits sexual harassment in the workplace, which may include actions by members of the opposite sex of an employee as well as members of an employee's own sex. Prohibited sexual harassment may include actions which are overtly sexual or facially neutral if such actions constitute gender, gender identity, gender expression and/or sexual orientation-based discrimination. Prohibited sexual harassment may also include unwanted or unwelcome discussion of a Person's sexual activity or history, sexual orientation or gender identity or gender expression.

The purpose of this document is to provide guidance to agencies and Human Resources (HR) staff who support them as well as Equal Employment Opportunity (EEO) Offices (HR/EEO) on processes to provide support in the workplace to employees undergoing gender transition, detail the protections in place for transgender and gender non-conforming employees, and address some of the common questions that employees and agencies may raise. Because this guidance is general in nature, HR/EEO should consult with the Office of Administration, Bureau of Equal Employment Opportunity Policy and Appeals (OA, BEEOPA) to seek advice in individual circumstances.

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.

Definitions

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

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

Gender identity: A person's internal sense of being male, female, some combination of male and female, or neither male nor female.

Gender expression: The physical and behavioral manifestations of one's gender identity. 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*.

Gender Transition or Transition: The process or period when an individual begins to live consistent with their gender identity. Transition may involve social transition (changes in name or gender pronouns or manner of dress), medical transition (hormone therapy, mental health support, or surgical procedures, or legal hurdles (name change), however none of these steps are required.

Nonbinary: A term used to describe a person who does not identify exclusively as a man or a woman. These individuals may identify as being both, somewhere in between, or neither. Non-binary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer or gender-fluid.

Sexual orientation: A person's sexual or emotional attraction to other people. A person's sexual orientation is distinct from a person's gender identity and expression.

Transgender: An umbrella term that can be used to describe people whose gender identity and/or expression is different from the sex assigned to them at birth (e.g. the sex listed on their birth certificate).

Commonwealth Resources and Roles

Human Resources (HR): Each agency has HR staff who provide support and will assist employees during the transition process (including name change, benefits questions, communication within workplace, etc.).

OA, BEEOPA: The Bureau is available to provide additional guidance and answer agency questions regarding implementation of these guidelines. Any questions should be directed to OA, BEEOPA at 717-783-1130 or RA-OABEEO@pa.gov.

Leave Administration: Commonwealth personnel designated to respond to questions and provide assistance regarding leave, including but not limited to sick and annual leave, 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. Medical treatments related to transitioning may be covered under Commonwealth offered health insurance. Employees should contact their insurance carrier directly with questions about specific coverage.

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

All employees who are transitioning will be treated in accordance with these guidelines and Commonwealth nondiscrimination policies. There are several issues that commonly generate questions from managers, supervisors, and employees when an employee is transitioning. To assist HR and EEO staff, we offer the following guidance:

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

The Plan may 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 how coworkers, clients, and others in the workplace will be made aware of the transition.
- 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. Transitioning employees may or may not disclose medical information with HR staff during their transition. Nevertheless, all information related to an employee's transition should be kept confidential to the extent possible in accordance with Commonwealth policy, including Management Directive 505.18 Amended, *Maintenance, Access, and Release of Employee Information*, unless the employee authorizes the release of said information.

Questions from HR staff, managers, supervisors, and employees regarding an employee's transition, such as those related to name, pronouns, gender identity, etc. should be referred by HR staff to the employee or to a person whom both the agency and the employee agree to designate this responsibility. It should be emphasized that discussions regarding an employee's medical procedures, body, and sexuality are inappropriate.

Name and Pronoun Usage: All employees are to be addressed by the name and pronoun of their choosing. 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 transition by the wrong name or pronoun or asking what someone may view as inappropriate questions. Employees in transition may correct a co-worker who makes a mistake. If, after a reasonable period, an employee or employees continue to address the employee who is transitioning by the wrong name or pronoun(s) or ask what are viewed as inappropriate questions, HR/EEO must be notified. Continued intentional misuse of the employee's new name or pronouns, and references to the employee's former gender, is unacceptable and may constitute harassment or create a hostile work environment in violation of Commonwealth anti-discrimination policies and may result in discipline.

Name Changes on IDs and Records: As soon as an employee provides documentation to the agency of a legal name change, HR 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 chosen name does not match the individual's legal name, the chosen 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 I-9s, 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. Employees may also use ESS to change their gender by accessing the tile titled, "Personal Data." 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 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. During transition, the employee makes the decision of which facility is appropriate for them. Nonbinary individuals may use whichever facility in their judgement is most appropriate for them.

Workplace assignments and duties: Most often, specific job assignments and duties cannot be differentiated by gender. For a transitioning employee, once they have begun working full-time in the gender that reflects their 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 affirmation 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 a transitioning employee because of the employee's gender identity or expression, such a request will not be honored. Agencies will not subject employees to adverse employment actions based on gender identity. Therefore, an agency will not honor a request to isolate the employee from certain other individuals. If such a request is made, HR or OA, BEEOPA may be able to provide guidance or training to the individual making the request regarding the Commonwealth's nondiscrimination policies.

Sick and medical leave: Employees receiving medical treatment as part of their transition may use sick leave in accordance with policy and applicable collective bargaining agreements. Employees who are qualified under FMLA leave provisions may also be entitled to take leave for transition-related needs of their families.

Hiring process

During the hiring process, HR and hiring managers should be sensitive to the possibility that applicants have transitioned or are transitioning. 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 and thereafter. Any information in a background check that indicates a previous name or gender change cannot be used against an applicant for employment. Be aware that gaps in job histories and missing references can be due to transition time or because of related reasons.

Addressing Co-Worker Concerns/Training

If the employee is willing, HR, in conjunction with the employee who is transitioning, should determine how and when to advise co-workers of the employee's transition. Efforts to notify co-workers of changes, including name and gender-identity, should be made in close proximity to the employee's transition at work. Information on the transitioning process should be provided to employees as necessary, and if needed. Whether this is 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, BEEOPA 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.

Managers and supervisors are integral to the transitioning process because part of their overall responsibilities include ensuring that employees work together productively and treat one another with dignity and respect to prevent discrimination. HR/EEO must ensure that managers and supervisors are equipped with the appropriate information to answer questions and address concerns that employees may have regarding the transitioning process and to remind all employees that they are expected to conduct themselves in accordance with Commonwealth policies.

Equal Opportunity and Harassment

If an employee believes they have been discriminated against on any of those bases, the employee has a right to file an internal complaint under Management Directive 410.10 Amended, *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 an internal discrimination complaint in accordance with Management Directive 505.30 Amended, *Prohibition of Sexual Harassment in Commonwealth Work Settings*. Employees in agencies under the governor's jurisdiction may file a complaint via telephone to (717) 783-1130 or email to RA-OAEEOCOMPLAINT@pa.gov.

Contact the Office of Administration, Bureau of Equal Employment Opportunity Policy and Appeals for questions or concerns related to this guidance.