

# TRANSGENDER INCLUSION IN THE WORKPLACE

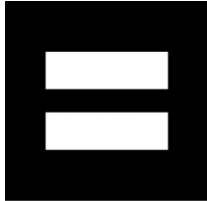
2ND EDITION | A HUMAN RIGHTS CAMPAIGN FOUNDATION REPORT



HUMAN  
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ISBN 10: 1-934765-04-x  
ISBN 13: 978-1-934765-04-3



# **TRANSGENDER INCLUSION IN THE WORKPLACE**

## **2<sup>ND</sup> EDITION**

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A Human Rights Campaign Foundation Report  
April 2008, Revised July 2008

**HUMAN  
RIGHTS  
CAMPAIGN  
FOUNDATION<sup>TM</sup>**

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## HOW TO USE THIS GUIDE

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This guide makes extensive reference and use of information and resources that are constantly changing as employers continue to create and refine best practices for transgender inclusion and legislation is passed.



Where information might become outdated quickly, we have provided links to pages that are updated frequently on the Human Rights Campaign website.



Also, where we could not go into greater depth on an issue that might be of particular interest to the reader, we have provided links to web sites with more information.

Additionally, this guide extensively references itself by referring the reader to the section and page where the relevant information can be found. If reading an electronic copy of this publication, click on the reference to be taken to it automatically.

To further assist the reader, we have provided a limited index of terms of interest at the end of this guide (see “*Index*” on page 60).

## FEEDBACK

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This guide will only continue to improve and expand based on the practical experiences of and feedback from employers and employees. Consider sharing any feedback or examples of successes or challenges your business has encountered with the Human Rights Campaign Foundation via [workplace@hrc.org](mailto:workplace@hrc.org).

## INTRODUCTION & BUSINESS CASE FOR TRANSGENDER INCLUSION

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The Human Rights Campaign Foundation created *Transgender Inclusion in the Workplace* to provide human resource and other employment professionals with an overview of the legal and other issues encompassing transgender inclusion, as well as the best practices that leading U.S. businesses utilize today — from discrimination and benefits policies to internal practices that reflect how gender is expressed and integrated in the workplace.

At the end of 2004, when the first edition of this guide was published, only 27 of the Fortune 500 companies prohibited discrimination based on gender identity. As of April 2008, that number had increased to 153 companies (see “*Transgender Inclusion in the Private Sector*” on page 22). While non-discrimination policies are just one component of inclusive workplaces, these numbers demonstrate that, increasingly, U.S. employers value their transgender employees. Moreover, these businesses stand ahead of the curve of evolving employment laws throughout the country.

Cities, counties and states throughout the U.S. are passing laws and ordinances that establish expectations of transgender inclusion for employers. Today, nearly 100 cities and counties, 12 states and the District of Columbia have laws and ordinances that prohibit discrimination based on gender identity (see “*Employment Non-Discrimination Laws & Ordinances*” on page 8). And public opinion continues to sway in favor of fairness for transgender people in employment (see “*Public Opinion*” on page 19).

But even with increasing protections and acceptance throughout the United States, surveys find that at least one of every five transgender people have experienced workplace discrimination and harassment (see “*Discrimination Against Transgender Workers*” on page 17). And the vast majority of employer-based health insurance plans exclude coverage for essential medical care for transgender people, placing tremendous burden and stress on transgender workers and employees with transgender family members.

Such discrimination, and subsequent loss of talent, comes at a significant cost to employers, many of whom are expected to suffer from shortages of qualified workers. To address many of these issues, this guide details successful practices that employers and employees have shared or developed with the Human Rights Campaign Foundation, in addition to drawing from the expertise of transgender workplace advocates (see “*Recommended Policies and Practices*” beginning on page 20).

Ultimately, employers that incorporate gender identity in non-discrimination policies and other business practices:

- Stay ahead of evolving local, state and federal laws.
- Bolster employee recruitment and retention efforts that emphasize diversity.
- Mitigate the risk of legal discrimination claims.

*“It doesn’t matter what employees’ orientation, heritage or gender is. It’s their talent. Just to be competitive, companies really have to do this.”*

— Jim Sinocchi, Director of Workforce Communications for **IBM**  
Global Workforce Diversity<sup>1</sup>



**Introduction & Business Case for Transgender Inclusion**  
<http://www.hrc.org/issues/9603.htm>

## TERMINOLOGY

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The following definitions will help you understand and explain the terms used when discussing gender identity in the workplace.

### SEX

The term “sex” refers to the classification of people as male or female. At birth, infants are assigned a sex based on a combination of biological characteristics including: chromosomes, hormones and reproductive organs.

### GENDER

The term “gender,” while often used interchangeably with “sex,” can refer specifically to the behavioral, cultural, psychological or social traits typically associated with one sex, rather than biological characteristics.

### GENDER IDENTITY

The term “gender identity,” distinct from the term “sexual orientation,” refers to a person’s innate, deeply felt psychological sense of gender, which may or may not correspond to the person’s body or designated sex at birth (the sex originally listed on a person’s birth certificate).

### GENDER EXPRESSION

The term “gender expression” refers to all of a person’s external characteristics and behaviors — such as dress, grooming, mannerisms, speech patterns and social interactions — that are socially identified with a particular gender. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine or neutral in one culture may not be assessed similarly in another. A person’s gender expression may also be referred to as his or her “**gender presentation.**” Workplace practices should generally apply to an employee’s full-time gender presentation (see “*Documentation: Update Personnel Records*” on page 30, “*Facilities: Grant Restroom and Locker Room Access according to an Employee’s Full-time Gender Presentation*” on page 33 and “*Dress Codes: Make Dress Codes Gender-Neutral and Apply Consistently*” on page 35).

### SEXUAL ORIENTATION

The term “sexual orientation” describes a person’s enduring physical, romantic, emotional and/or spiritual attraction to another person. Gender identity and sexual orientation are not the same.

### TRANSGENDER

The umbrella term “transgender” (sometimes shortened to “trans”) encompasses people who experience and/or express their gender differently from conventional or cultural expectations — either in terms of expressing a gender that does not match the sex listed on their original birth certificate (i.e., designated sex at birth) or physically altering their sex. The term includes transsexuals, cross-dressers and other gender-variant people; not all people who consider themselves or who may be considered by others as transgender will undergo a gender transition. (Transgender people should not be referred to as “transgendered.”<sup>2</sup>)

### TRANSPHOBIA

The fear and hatred of, or discomfort with, people whose gender identity or gender expression do not conform to cultural gender norms.



## TRANSSEXUAL

The term “transsexual” refers to a person who has changed, or is in the process of changing, his or her physical sex to conform to his or her internal sense of gender identity. The term can also be used to describe people who, without undergoing medical treatment, identify and live their lives full-time as a member of the gender different from their designated sex at birth. In contrast to the term “transgender,” “transsexual” is not an umbrella term, and many people who identify as transgender do not identify as transsexual. Those transitioning from male to female are often referred to as “MTFs” or “transwomen” and those transitioning from female to male are frequently called “FTMs” or “transmen.”

Many transsexual people experience discomfort from the strong internal sense that their true gender identity does not match their physical sex. The medical term for this discomfort, which can be severe, is “**gender identity disorder**,” or GID, and it is listed as a mental disorder in the “Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition” published by the American Psychiatric Association. Not all transgender people experience or are diagnosed with GID. GID is similar to, and often interchangeably used with, the term “**gender dysphoria**.” Because it labels people as “disordered,” GID is controversial.

## GENDER TRANSITION

The term “gender transition” refers to the process through which a person modifies his or her physical characteristics and/or gender expression to be consistent with his or her gender identity. Gender transition may, but does not necessarily, include hormone therapy, sex reassignment surgeries and/or other medical or surgical components. The process may also include telling one’s family, friends and/or co-workers, and changing one’s name and/or gender on legal documents. The transition process is generally conducted under medical supervision based on a set of standards developed by medical professionals (see “*The Gender Transition Process*” on page 6).

## CROSS-DRESSER

The term “cross-dresser” refers to people who wear the clothing and/or accessories considered by society to correspond to the “opposite” sex. Unlike transsexuals, cross-dressers typically do not seek to change their physical characteristics and/or manner of expression permanently or desire to live full-time as a gender different than their birth sex. People who cross-dress some of the time may fear that discovery of their cross-dressing, even when on personal time, may lead to discrimination or harassment at work. In the vast majority of cases, employers do not have the right to monitor or regulate employees’ off-the-job conduct. Employers should neither inquire about nor take adverse action against an employee should it learn about off-the-job cross-dressing from another source. (Cross-dressers are sometimes termed “transvestites,” but this term is considered derogatory and should not be used.)

## INTERSEX

The term “intersex” refers to a person who is born with sex chromosomes, external genitalia or an internal reproductive system that is not considered “standard” for either male or female.<sup>3</sup> Although many intersex people do not identify as transgender, the workplace issues relating to transgender people can overlap with those that affect intersex people. (Intersex people are sometimes termed “hermaphrodites,” but this term can be considered stigmatizing, outdated or misleading and should not be used.)



### Gender Identity: Related Terms and Definitions

<http://www.hrc.org/issues/5295.htm>

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## THE TRANSGENDER EMPLOYEE

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People who experience or express their gender differently from conventional or cultural expectations can encounter complex and unique challenges and stigma throughout their personal and professional lives. A supportive and respectful work environment is critical for transgender people, wherever they may be in the process of living consistently with their gender identity.

This publication focuses primarily on people who have or who plan to transition genders, many of whom identify as transsexual and many of whom have undergone or are undergoing medical treatment — such as hormone therapy and sometimes surgery — to align their bodies with their internal sense of gender. But transgender people also employ non-medical methods to live and express themselves consistently with their gender identity, such as wearing preferred-gender clothing and body-shaping garments, adjusting mannerisms and speech patterns, and asking friends and family to call them by their preferred names and pronouns.

Whereas most employees can choose whether to disclose certain personal information at work, people who plan to stay with the same employer while transitioning clearly do not have that option. Given that an employee is, almost without exception, obligated to disclose or “come out” to his/her employer in order to live full-time in his/her new gender, employers necessarily become involved in an employee’s transition.



**Coming Out as Transgender**  
<http://www.hrc.org/issues/7047.htm>

## TRANSGENDER POPULATION

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There are no concrete statistics on the number of transgender people in the United States. Estimates on the number of *transsexual* people, which ignore the broader transgender population, range anywhere from 0.25 to 1 percent of the U.S. population. These estimates are dated and likely undercount the transsexual population because, for example, they do not account for people who have not yet undergone, cannot (for medical, financial, safety or other reasons) or choose not to undergo sex reassignment surgeries. The most-cited estimates have been based on counts of people who have undergone sex-reassignment under the care of certain European clinics.<sup>4</sup>

- In 1994, the American Psychiatric Association reported that “data from small countries in Europe with access to total population statistics and referrals suggest that roughly 1 per 30,000 adult males and 1 per 100,000 adult females seek sex reassignment surgeries.”<sup>5</sup>
- In 1986, researchers in the Netherlands, which offers transgender-related health benefits in its universal healthcare plan, calculated the prevalence of male-to-female transsexualism at 1 in 18,000 and female-to-male at 1 in 54,000.<sup>6</sup> A follow-up study from 1996 cited prevalence at 1 in 11,900 males and 1 in 30,400 females.<sup>7</sup>
- In 2002, Lynn Conway, a professor at the University of Michigan, estimated male-to-female transsexualism in the United States to be in the range of 1 in 500 to 1 in 2,500.<sup>8</sup>

T.M. Witten, Executive Director of the TranScience Research Institute, focused on the broader transgender spectrum and found that, of a random international sample, 8 percent of respondents self-identified as something other than strictly “male” or “female.”<sup>9</sup>

Some employers have attempted to determine the size of their transgender employee population through engagement surveys or surveys of employee resource group members that allow employees to self-identify based on gender identity (see “*Collecting Gender Data*” on page 31). According to a survey by J.P. Morgan Chase, 325 of its 160,000 employees, or roughly 0.2 percent, self-identify as transgender.<sup>10</sup> This relatively small number is consistent with the general issue of unemployment or underemployment among transgender people.

*“A defense attorney might think of it this way: if your clients’ employees total in the thousands, chances are you will eventually need to counsel a client about a transsexual employee’s rights.”*  
— Neil Dishman, Jackson Lewis LLP<sup>11</sup>

## **GENDER NON-CONFORMING AND GENDER-VARIANT EMPLOYEES**

The transgender population includes many who do not identify as transsexual but whose appearance does not conform to gender stereotypes. Gender stereotypes can affect any number of people — from women who appear to be “too masculine” to men who appear to be “too feminine.” Protections based on gender identity help create the reasonable expectation of a safe environment in which all employees are evaluated by their performance rather than others’ perceptions of or comfort with their gender.

## **STEALTH TRANSGENDER EMPLOYEES**

Employers may have transgender employees that they are not aware of. People who have transitioned in the past — prior to working with a particular employer — may never need or choose to disclose their transgender status to their employer. People who live in “stealth” do not disclose their transgender status for various reasons, including concerns about discrimination or harassment, and are indistinguishable from non-transgender people. These employees have most likely been able to change most of their documentation and government records to match their gender identity, but employers should nonetheless strive to ensure these employees’ privacy (see “*Conversations: Ensure Employee’s Privacy*” on page 29).

## **TRANSGENDER FAMILY MEMBERS OF EMPLOYEES**

Employers may also have employees with a transgender spouse, partner, child or other family member. Issues such as non-discrimination policies and access to comprehensive healthcare are often as important for employees with transgender family members as they are to transgender employees themselves.



### **Resources for People with Transgender Family Members**

<http://www.hrc.org/issues/9608.htm>



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### **Number of Transgender Employees**

<http://www.hrc.org/issues/9598.htm>

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## THE GENDER TRANSITION PROCESS

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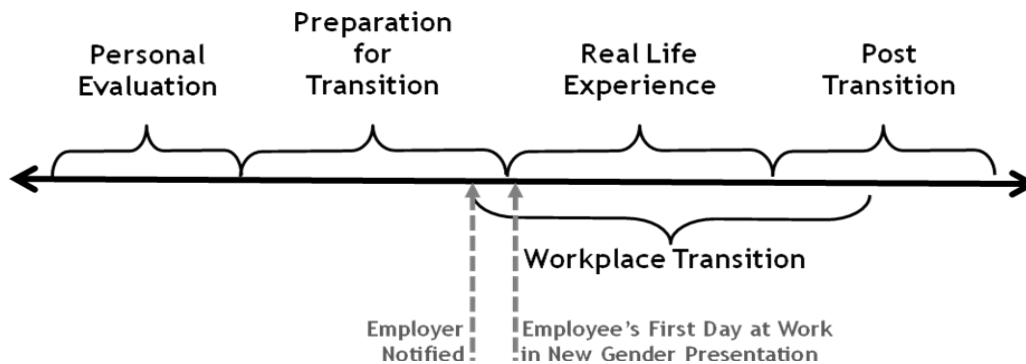
Gender transitions are generally guided by internationally accepted medical standards of care for gender identity disorders that are designed to ensure success. The process can, but does not necessarily, involve the following steps — the duration and order of which vary depending on the person and the guidance of their health provider.

- Psychological and overall health evaluation to rule out other diagnoses.
- Ongoing mental health counseling to assess the extent of the condition and understand options, consequences and obstacles.
- Hormone therapy generally attributed to the person’s new gender (e.g.: testosterone for transmen or estrogen and testosterone blockers for transwomen).
- Continued medical supervision to assess hormone-induced physical changes.
- The “Real Life Experience” of living and presenting in the person’s new gender identity on a full-time basis for a duration determined by the person’s health provider to ascertain level of comfort in reassigned gender. Most transgender employees will approach management about their transition at this stage of the process.
- Continued hormone administration and life in the reassigned gender may be accompanied by surgery to adjust primary and secondary sex characteristics, facial structure, etc.  
Note: A transgender person’s pursuit of surgery tends to become a central focus of a person’s transition. Medical treatment related to a gender transition should be treated with the same confidentiality as other medical treatments (see “*Conversations: Ensure Employee’s Privacy*” on page 29).

Overwhelmingly, gender transitions successfully allow people to live a well-adjusted life in the gender consistent with their gender identity. The degree of success, however, is strongly influenced by a person’s ability to maintain a stable job and income during transition, and the support level of the work environment.

Employers that establish and utilize gender transition guidelines proactively will be most prepared to provide a supportive work environment for transitioning employees and their colleagues (see “*Process: Establish Gender Transition Guidelines*” on page 26).

**Figure 1. Example timeline for a transitioning employee (transitions will vary based on the person).**



### STANDARDS OF CARE

The most well-known standards of care for transitioning people are maintained by the World Professional Association for Transgender Health (formerly known as the Harry Benjamin International Gender Dysphoria Association), whose standards have been in use since 1979. “Standards of Care, Sixth Edition” outlines commonly accepted treatments and procedures that health professionals may follow when assisting people through gender transition.

Another increasingly common protocol is known as “Informed Consent.” Through this protocol, transgender people are made aware of the effects of medical treatment and then asked to consent, much like other medical procedures. Some health providers supervise medical transitions through a combination of both protocols.

Medical treatment for transitioning people follows commonly accepted practice; treatment should be considered medically necessary and covered under health insurance plans (see “*Discrimination in Health Insurance*” on page 36).



**WPATH: Standards of Care, Sixth Edition**  
[http://www.wpath.org/publications\\_standards.cfm](http://www.wpath.org/publications_standards.cfm)



**Managing Employee Gender Transition in the Workplace**  
<http://www.hrc.org/issues/4845.htm>

## EMPLOYMENT NON-DISCRIMINATION LAWS & ORDINANCES

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Employers with protections for transgender employees, including internal grievance procedures for claims of discrimination based on gender identity, are ahead of the curve of evolving local, state and federal laws.

Under non-discrimination laws and ordinances that include gender identity, employers are barred from firing, refusing to hire, refusing to promote or otherwise adversely treating an applicant or employee who has transitioned genders or plans to undergo a gender transition, or whose gender presentation does not match their designated sex at birth. Some laws and ordinances explicitly protect *perceived* gender identity and gender expression, while some also provide for restroom access in public locations and places of employment (see “*Facilities: Grant Restroom and Locker Room Access according to an Employee’s Full-time Gender Presentation*” on page 33).<sup>12</sup>

Whether a jurisdiction prohibits discrimination based on gender identity may not be totally evident by looking solely at the list of protected categories; some jurisdictions include “gender identity” within their legal definition of “sexual orientation”<sup>13</sup> or have had court rulings that afford some protections for transgender people under other employment laws.

Irrespective of whether employers are based or operate in jurisdictions with non-discrimination laws that include gender identity, it is important that they explicitly include the term “gender identity or expression” in their own policies in order to make it sufficiently clear to current and potential employees that such discrimination is impermissible (see “*Policies: Include “Gender Identity or Expression” as a Protected Category*” on page 21).



**Laws and Ordinances Protecting Transgender Workers**

<http://www.hrc.org/issues/4844.htm>

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## CITY AND COUNTY ORDINANCES

As of April 3, 2008, **98 cities and counties** prohibit employment discrimination on the basis of gender identity in employment ordinances that governed all public and private employers in those jurisdictions. Eleven of those passed their ordinances in 2007 or 2008. Some jurisdictions prohibit discrimination on the basis of gender identity for employees of those cities and counties — these policies do not affect private employers in those jurisdictions.

**Table 1. Cities and Counties that Prohibit Discrimination Based on Gender Identity in Public and Private Employment, By State (Year Effective), as of April 3, 2008.**

<i>Arizona</i>		<i>Illinois</i>	
Tucson, City of	1999	Bloomington, City of	
		Carbondale, City of	2005
		Champaign, City of	1977
		Chicago, City of	2002
		Cook, County of	2002
		Decatur, City of	
		DeKalb, City of	2000
		Evanston, City of	1997
		Peoria, City of	2003
		Springfield, City of	2003
		Urbana, City of	1979
<i>California</i>		<i>Indiana</i>	
Los Angeles, City of	1979	Bloomington, City of	2006
Oakland, City of	2005	Indianapolis, City of and	
San Diego, City of	2003	Marion County	2005
San Francisco, City of	1994		
San Jose, City of	2002		
Santa Cruz, City of	1992		
Santa Cruz, County of	1998		
West Hollywood, City of	1998		
<i>Colorado</i>		<i>Iowa</i>	
Boulder, City of	2000	Iowa City, City of	1995
Denver, City of	2001		
<i>District of Columbia</i>		<i>Kentucky</i>	
Washington, City of	2006	Covington, City of	2003
		Jefferson, County of	1999
		Lexington-Fayette, County of	1999
		Louisville, City of	1999
<i>Florida</i>		<i>Louisiana</i>	
Broward, County of	2008	New Orleans, City of	1998
Gainesville, City of	2008		
Key West, City of	2003		
Miami Beach, City of	2004		
Monroe, County of	2003		
Oakland Park, City of	2007		
West Palm Beach, City of	2007		
<i>Georgia</i>		<i>Massachusetts</i>	
Atlanta, City of	2000	Boston, City of	2002
Decatur, City of	2002	Cambridge, City of	1997
		Northampton, City of	2005
		<i>Maryland</i>	
		Baltimore, City of	2002
		Montgomery, County of	2007

**Table 1 (continued)**

<b>Michigan</b>		<b>Pennsylvania</b>	
Ann Arbor, City of	1999	Allentown, City of	2002
Detroit, City of	2008	Easton, City of	2006
East Lansing, City of	2005	Erie, County of	2002
Grand Rapids, City of	1994	Harrisburg, City of	1983
Huntington Woods, City of	2002	Lansdowne, Borough of	2006
Saugatuck Township	2007	New Hope, Borough of	2002
Saugatuck, City of	2007	Philadelphia, City of	2002
Ypsilanti, City of	1997	Pittsburgh, City of	1997
		Scranton, City of	2005
		Swarthmore, City Of	2006
		York, City of	1998
<b>Minnesota</b>		<b>Texas</b>	
Minneapolis, City of	1975	Austin, City of	2004
St. Paul, City of	1990	Dallas, City of	2002
		El Paso, City of	2003
<b>Missouri</b>		<b>Washington</b>	
Kansas City, City of	2008	Burien, City of	2005
University City, City of	2005	King, County of	2006
		Olympia, City of	2005
		Seattle, City of	1986
		Tacoma, City of	2002
<b>New York</b>		<b>Wisconsin</b>	
Albany, City of	2004	Dane, County of	2001
Buffalo, City of	2002	Madison, City of	2000
Ithaca, City of	2003	Milwaukee, City of	2007
New York, City of	2002		
Rochester, City of	2001		
Suffolk, County of	2001		
Tompkins, County of	2005		
<b>Ohio</b>		<b>West Virginia</b>	
Cincinnati, City of	2006	Charleston, City of	2007
Toledo, City of	1998		
<b>Oregon</b>			
Beaverton, City of	2004		
Bend, City of	2004		
Benton, County of	1998		
Hillsboro, City of	2006		
Lake Oswego, City of	2005		
Lincoln City	2005		
Multnomah, County of	2001		
Portland, City of	2000		
Salem, City of	2002		



**City and County Ordinances Protecting Transgender Workers**

<http://www.hrc.org/issues/9602.htm>

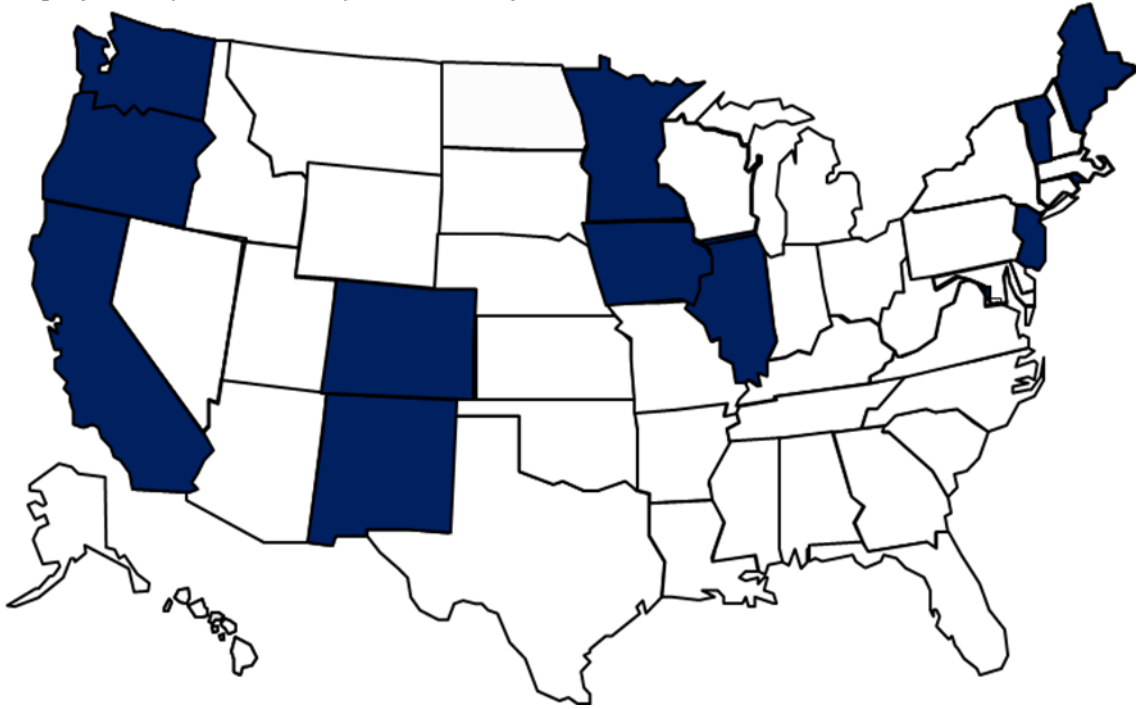


## STATE LAWS

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As of January 2008, **twelve states and the District of Columbia** prohibit employment discrimination based on gender identity; all of them also prohibit employment discrimination based on sexual orientation.

**Figure 2. States that Prohibit Discrimination Based on Gender Identity in Public and Private Employment (Year Effective), as of January 1, 2008.**



California (prohibited discrimination based on gender identity in 2003, sexual orientation 1992); Colorado (2007); Iowa (2007); Illinois (2005); Maine (2005); Minnesota (1993); New Jersey (gender identity 2006, sexual orientation 1992); New Mexico (2003); Oregon (2008); Rhode Island (gender identity 2001, sexual orientation 1995); Vermont (gender identity 2007, sexual orientation 1992); Washington (2006); and the District of Columbia (gender identity 2006, sexual orientation 1973).  
*Note: As of 2005, Hawaii law prohibits discrimination based on gender identity in housing and public accommodations, but not in employment.*



### Maps of State Laws and Policies

[http://www.hrc.org/about\\_us/state\\_laws.asp](http://www.hrc.org/about_us/state_laws.asp)

Five other states — Indiana, Kansas, Michigan, Ohio and Pennsylvania — have adopted policies that ban discrimination against state employees. Courts or agencies in several other states — Connecticut, Florida, Hawaii, Massachusetts, New Hampshire and New York — have interpreted their sex or disability discrimination statutes to prohibit certain forms of discrimination against transgender people. As of April 2008, **twelve states** were considering legislation to add gender identity to their employment non-discrimination laws.<sup>14</sup>

## FEDERAL LAW

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As of April 2008, no federal law consistently protects transgender people from discrimination in the workplace. As in some states, federal laws barring discrimination based on sex and disability have been argued as avenues for protection for some transgender workers. The outcomes of these efforts have been mixed. In addition to the cases discussed below, see “*Appendix C: Select Employment Discrimination Cases*” on page 51 for federal cases dealing with discrimination against transgender workers.

The Employment Non-Discrimination Act, introduced in the 110<sup>th</sup> Congress as H.R. 2015, would add gender identity to existing non-discrimination law. A version of the bill with just sexual orientation, H.R. 3685, was passed in November 2007 by the U.S. House of Representatives. As of April 2008, more than 50 major businesses had joined the Business Coalition for Workplace Fairness, which supports legislation that would add both sexual orientation and gender identity to existing classes protected under federal employment law.



### **Businesses Support the Employment Non-Discrimination Act of 2007**

<http://www.hrc.org/issues/4852.htm>

## CIVIL RIGHTS ACT

Federal sex discrimination law, under Title VII of the Civil Rights Act of 1964, has historically been interpreted to exclude transgender workers. While some recent legal developments have challenged that understanding, protection for transgender workers under Title VII remains unsettled.

In 2004, the U.S. Court of Appeals for the Sixth Circuit decided that a transsexual woman could file suit under Title VII’s prohibition on discrimination based on sex. In that case, *Smith v. City of Salem, Ohio*, the plaintiff was disciplined by her employer when she announced that she was beginning to transition from male to female. The court cited the U.S. Supreme Court’s decision in *Price Waterhouse v. Hopkins*, holding discrimination based on a failure to conform to traditional sex stereotypes to be impermissible under Title VII, as grounds to permit a suit by a transgender plaintiff. The Sixth Circuit affirmed its conclusion regarding protections for some transgender workers under Title VII in 2005, in *Barnes v. City of Cincinnati*, the case of a transsexual policewoman discriminated against by the Cincinnati Police Department.

Other Courts of Appeals have not reviewed this issue, or have not revisited it since the adoption of *Price Waterhouse*, and it is unclear whether those courts would follow the reasoning of *Smith* and *Barnes*. As other federal courts continue to consider the issue, in Title VII and related contexts, the jurisprudence will continue to evolve.

## AMERICANS WITH DISABILITIES ACT

Federal law against disability discrimination in private employment — the Americans with Disabilities Act — is generally not available as a source of protection for transgender workers. When enacted in 1990, the ADA explicitly exempted “transvestism, transsexualism ... [and] gender identity disorders not resulting from physical impairments” from the definition of “disability” under the law.<sup>15</sup>

## INTERNATIONAL LAWS

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Information on transgender protections specific to each country's laws and court cases is sparse. While some countries provide legal protections for transgender people, businesses can and should extend protections for transgender employees to their global operations. As in the United States, international transgender issues are rapidly evolving.

In the **European Union**, a 1996 decision of the European Court of Justice in *P v S and Cornwall County Council* provided protections from employment discrimination related to “gender reassignment.” The **United Kingdom** formalized this EU decision when it passed the 1999 Sex Discrimination (Gender Reassignment) Regulations. This law provides protections for transgender people “intend[ing] to undergo, ... undergoing or hav[ing] undergone gender reassignment,” and applies to any stage of employment. The European Court of Human Rights has continued to uphold and require protections for transgender people, and both the U.K. and **Spain** also have laws that allow transgender people to change their name and gender on official documents without needing to undergo surgery.<sup>16</sup>

Two U.K. studies — one conducted before the ECJ decision and one after the adoption of the 1999 U.K. non-discrimination law — demonstrate that while discrimination against transgender employees has decreased, it continues to occur frequently. Before the ECJ decision, 37 percent of people who had transitioned and subsequently changed jobs claimed that they were forced to leave. After the enactment of the 1999 U.K. non-discrimination law, this decreased to 16 percent. However, only half of people surveyed were allowed to use the appropriate bathroom while in transition.<sup>17</sup>

Outside of Europe, **South Africa** and many states and territories of **Australia** also prohibit discrimination against transgender people.<sup>18</sup> Businesses that operate in these countries are prohibited, and could be held liable for, discrimination against or harassment of transgender employees.

### YOGYAKARTA PRINCIPLES

A group of distinguished experts in international law developed the groundbreaking “Yogyakarta Principles” on sexual orientation and gender identity in March 2007, shortly after the 2006 meeting of the UN Human Rights Council at which 54 nations called attention to human rights violations based on sexual orientation and gender identity and the need to take action to prevent further incidents of abuse, repression and discrimination.<sup>19</sup> The Principles call for action from the United Nations, individual governments and others to ensure the universal reach of human rights protections. Moreover, they call on businesses to “acknowledge and act upon the important role they have in both ensuring respect for these Principles with regard to their own workforces and in promoting these Principles nationally and internationally.”<sup>20</sup>



#### Yogyakarta Principles

<http://www.yogyakartaprinciples.org/>



#### International Laws Protecting Transgender Workers

<http://www.hrc.org/issues/9604.htm>

## RECRUITMENT, RETENTION AND PRODUCTIVITY

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Employers that develop and implement inclusive policies and practices for transgender employees, particularly those that demonstrate their commitment by supporting transitioning workers and hiring transgender applicants, can improve recruitment and retention of not just transgender employees, but also other fair-minded employees.

Human capital is arguably the most valuable asset an employer has today. It is the collective sum of the attributes, life experience, knowledge, inventiveness, energy and enthusiasm that employees invest in their work. As the number of businesses with inclusive policies and practices continues to grow (see “*Transgender Inclusion in the Private Sector*” on page 22), transgender workers and others concerned about workplace fairness have increasing options from which to choose — employers in virtually every U.S. industry have protections for transgender employees.

With the expected shortage of qualified employees as waves of workers retire, employers cannot afford to ignore qualified employees and applicants who could choose another employer with more inclusive policies and practices.

*“The number of people who are going to retire in the next five to 10 years is staggering. If we can create a welcoming culture — change our DNA so inclusion and respect are part of it — then we’re going to attract and retain more world-class people.”*  
— Larry Harrington, vice president of internal audit at **Raytheon**

### RECRUITMENT

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Protections based on gender identity send a strong message to transgender job-seekers. Opportunities to recruit directly from transgender-identified applicant pools have increased since 2006, with career fairs and expositions such as the Southern Comfort Conference in Atlanta as well as those that target the broader GLBT community and professional organizations.

But employers have found that such protections also attract other diverse applicants and fair-minded job-seekers.

*“We have found in our recruiting efforts... that individuals will often look for signals about what a culture is like; having gender identity protection signals we are a diversity leader and are serious about providing an inclusive environment.”*  
— Ben Hladilek, Human Resources business partner at **J.P. Morgan Chase**<sup>21</sup>

*“[Policies that include gender identity are] used as a bellwether for a broader set of employees: if you’re the type of company with these policies, you also accept women and minorities.”*  
— Brad Salavich, former program manager for GLBT workforce diversity at **IBM**<sup>22</sup>



**GLBT Professional Development and Recruitment Opportunities**  
<http://www.hrc.org/issues/8954.htm>

## RETENTION & PRODUCTIVITY

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Employers that actively support transgender employees by providing a safe and stable work environment can have a profound effect on their experience and productivity at work and, ultimately, their commitment to the employer.

A November 2005 Gallup poll indicated that an employee's satisfaction with his or her employer, willingness to stay and inclination to recommend the employer to others are all strongly and positively related to the employer's diversity policies.<sup>23</sup> According to a 1997 study by the Families & Work Institute, "the quality of workers' jobs and the supportiveness of their workplaces are the most powerful predictors of productivity, job satisfaction, commitment to their employers and retention."<sup>24</sup> Employers that make employees feel valued "will gain a crucial competitive edge."<sup>25</sup>

Everyday matters can be significantly burdensome on transgender employees. For example, a masculine or "butch" female employee may feel so uncomfortable using the female restroom in her work area that she might plan her entire day — such as when to take meals, when and how much to drink — around using a more private restroom further away, or perhaps even in another building. Such distractions and mental effort around as basic a physiological need as using a restroom — a function that is generally taken for granted — is unnecessary and hurts employees' productivity.

*"[The policies] allow people to be who they are, and not have to hide it. It's also our way of saying that we recognize that these differences exist, and we are looking for your talent and what you can contribute."*  
—Hayward Bell, Chief Diversity Officer, **Raytheon Corp.**<sup>26</sup>

*"People who are comfortable and who feel included are more effective as employees — more creative and committed. That helps the company attract and retain top talent and reach more markets."*  
— Suellen Roth, vice president of global policy and diversity, **Avaya**<sup>27</sup>

Transgender people often face significant issues outside of work that may compound workplace concerns. Employees just beginning the process of undergoing a gender transition, after potentially having spent much of their lives denying or hiding their identity out of fear, often discover upon "coming out" that even limited disclosure can bring great stress and risk — ranging from rejection by spouses, children and other family members and friends to violence.

*"Besides coming out to my son, coming out at work was the most difficult thing I've ever done in my life. I was terrified."*  
— Donna Rose, author of *Wrapped in Blue: A Journey of Discovery* and advocate for the transgender community

## CORPORATE REPUTATION & THE HRC CORPORATE EQUALITY INDEX

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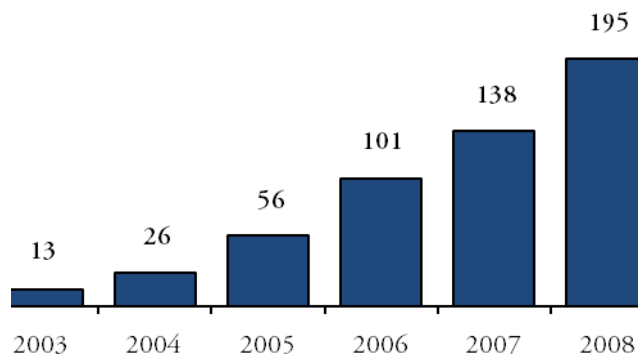
The HRC Foundation's Corporate Equality Index report, released each fall, provides an in-depth analysis and rating of large U.S. employers and their policies and practices pertinent to gay, lesbian, bisexual and transgender employees, consumers and investors. To receive a rating of 100 percent and the designation of "Best Place to Work," a business must include the term "gender identity" in its non-discrimination or equal employment opportunity policy, must offer one or more transgender wellness benefits and must provide transgender diversity training or comprehensive transition guidelines.

In 2008, 58 percent of the 519 rated employers prohibited discrimination based on gender identity, compared to just 46 percent in the previous year. Ninety employers had transition guidelines, up from 65 the previous year. Seventy-eight percent of rated businesses provided insurance that covered claims for at least one of five general categories of treatment to their transgender employees. Of the employers that met this criterion:

- 74 percent provide short-term leave for surgical procedures;
- 73 percent provide mental health benefits for counseling by a mental health professional;
- 35 percent provide pharmacy benefits for hormone therapy;
- 32 percent cover medical visits and lab procedures related to hormone therapy; and
- 27 percent provide health benefits for surgical procedures.

Prospective employees, consumers and some of the largest U.S. institutional investors use HRC's data when making decisions about where to apply their talents, spend their money and concentrate their investments.

**Figure 3. Number of Employers with 100 Percent Ratings on the Corporate Equality Index, by year.<sup>28</sup>**



**HRC Corporate Equality Index**  
<http://www.hrc.org/issues/cei.htm>



**Transgender Inclusion: Recruitment, Retention and Productivity**  
<http://www.hrc.org/issues/9605.htm>

## DISCRIMINATION AGAINST TRANSGENDER WORKERS

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**At least one in five transgender people surveyed report experiencing employment discrimination.** In six studies conducted between 1996 and 2006, 20 to 57 percent of transgender respondents said they experienced employment discrimination, including being fired, denied a promotion or harassed.<sup>29</sup> Though even more difficult to measure, transgender people also face incredible barriers as job applicants.



### **Bias in the Workplace**

<http://www.hrc.org/issues/8755.htm>

## COSTS OF DISCRIMINATION

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Unchecked bias has clear costs. According to the Level Playing Field Institute, more than 2 million professionals and managers leave workplaces each year due to unfairness, costing U.S. employers \$64 billion annually. 27 percent of people who experienced unfairness at work within the past year said their experience strongly discouraged them from recommending their employer to potential employees. Similarly, 13 percent said their experience strongly discouraged them from recommending their employer's products or services.<sup>30</sup>

Jason, a female-to-male transgender person employed at an Ivy League university, told HRC in 2004 that his immediate supervisor's reaction to his decision to transition was negative. Dismissing Jason's suggestion to provide awareness training and an open forum in which colleagues could ask questions, Jason's supervisor refused to help acclimatize his colleagues to his transition. Some of Jason's colleagues distanced themselves from him, and some of his male colleagues expressed discomfort with his use of the men's restroom. While the head of human resources eventually supported Jason's right to use the restroom that corresponds with his gender identity, without clear communication on the issue from management, it remained a source of discomfort for both Jason and his colleagues.

Before coming out as transgender, Jason had received no written complaints about his work and there was no indication in his personnel file of poor performance. Though it was in violation of the university's own policy to add performance complaints to an employee's personnel file without notifying that employee, Jason later discovered that e-mail correspondence from colleagues charging him of "uselessness" and "incompetence" had been placed in his file. Jason told HRC that he was looking for new employment.<sup>31</sup>

*Note: As of July 2006, all eight Ivy League schools explicitly prohibit discrimination on the basis of gender identity.*

Dr. Lynn Conway provides a famous example of the opportunity cost of discrimination.

Lynn Conway underwent sex-reassignment surgery in 1968 and was fired by IBM for being transsexual. Before her termination, Conway had invented a method by which computer processors make multiple calculations simultaneously and dynamically, which consequently led to the creation of supercomputers that can take enormous amounts of data and compile them to look for patterns.

In the 1970s, Conway went on to work for the Memorex Corp. at the Xerox Palo Alto Research Center, where her innovations influenced chip design worldwide. Conway has since won many awards and high honors, including election as a member of the National Academy of

Engineering, the highest professional recognition an engineer can receive. Conway is currently a professor and associate dean of the College of Engineering at the University of Michigan.<sup>32</sup>

*Note: IBM added the term “gender identity or expression” to its worldwide anti-discrimination policy in 2002.*

Lawsuits claiming discrimination based on gender identity can be costly to an employer and also affect the employer’s reputation.

Dana Rivers, a high school teacher in Sacramento, Calif., wrote a letter to colleagues in May 1999 explaining that she was undergoing a sex reassignment surgery from male-to-female. Rivers had worked in the school for eight years and was consistently rated by students as one of the best teachers they ever had. She had also developed a program for unmotivated students for which she was awarded an \$80,000 grant as well as the school’s “Stand and Deliver” award for the teacher who most inspired students.<sup>33</sup>

In June of that year, the school board sent a letter to all 1,500 families in the district disclosing Rivers’ status. Four parents wrote back in protest. The school board fired Rivers in September based on those parents’ complaints. She settled her lawsuit against the school board challenging her dismissal for \$150,000, including \$15,000 for legal costs.<sup>34</sup>

*“Employers need to assess whether they are willing to risk the negative public image discrimination can bring. People tend to focus on and remember the negative. It only takes one incident of such behavior to create longstanding ill will.”*  
— Moonhawk River Stone, a workplace diversity trainer on transgender inclusion<sup>35</sup>

## MITIGATING THE RISK OF A LAWSUIT

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Businesses that have established educational programs and systems to address and resolve claims of discrimination and harassment may be less vulnerable to lawsuits and multimillion-dollar penalties.

For instance, in *Cady v. Bristol-Myers Squibb Co.*, a gay man filed suit in 1998 alleging discrimination based on sexual orientation and a hostile work environment resulting from his supervisor’s anti-gay comments.<sup>36</sup> The court found that, while the supervisor’s comments were “clearly reprehensible and unpleasant,” because the company had acted swiftly, fairly and thoroughly to reprimand the supervisor — it forced him to accept a demotion, benefits reduction, and transfer or be dismissed with a loss of severance pay — the supervisor’s comments did not rise to the level of a “hostile work environment.”<sup>37</sup> Bristol-Myers Squibb had established its policy prohibiting discrimination based on sexual orientation by 1993, the year the plaintiff first filed a complaint about his supervisor’s comments.

*“It’s a litigation prevention measure. By incorporating gender identity or expression in their policies, employers are putting their workforce on notice that discrimination on this basis will not be tolerated. In addition, they are coupling a change in their policies with mandatory diversity and harassment training. Training is important so that employees understand the employer’s expectations, as well as the law, and that they become more familiar and comfortable with the concept of gender identity or expression.”*  
— John P. Isa, member of the HRC Business Council and employment attorney at Paul, Hastings, Janofsky & Walker LLP



## PUBLIC OPINION

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According to a 2007 survey conducted by Peter D. Hart Research Associates, Inc., 72 percent of Americans agree that “fairness is a basic American value and employment decisions should be based solely on qualifications and job performance, including for transgender people.” Younger respondents — aged 18 to 29 — went even further, with 82 percent supporting equal opportunities for all employees, regardless of sexual orientation and gender identity.<sup>38</sup>

**Table 2. Percent of Americans that agree that “fairness is a basic American value and employment decisions should be based solely on qualifications and job performance, including for transgender people,” by age.**

Age	18-29	30-39	40-49	50-59	60-69	70+	Overall
Fairness is a basic value	82%	73%	73%	74%	66%	67%	<b>72%</b>

Support for equal job protections and opportunities for transgender workers has been sound over the past several years; a 2002 Hart study found then that 59 percent of Americans favored implementing laws to prevent employment discrimination against transgender people.<sup>39</sup>

## COWORKERS

In a 2005 Harris Interactive poll, 60 percent of heterosexual respondents stated that they would feel comfortable working with an openly gay, lesbian, bisexual or transgender co-worker.<sup>40</sup> Just as knowing someone who is gay, lesbian or bisexual makes a person more inclined to support non-discrimination policies based on sexual orientation, knowing a transgender person is associated with more positive feelings toward transgender people, according to this poll.



**Public Opinion on Workplace Protections Based on Gender Identity**  
<http://www.hrc.org/issues/9607.htm>



**Discrimination Against Transgender Workers**  
<http://www.hrc.org/issue/9606.htm>

## RECOMMENDED POLICIES AND PRACTICES

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- Policies: Include “Gender Identity or Expression” as a Protected Category** (page 20)  
Prohibit discrimination against transgender employees by including “gender identity or expression” or “gender identity” among the list of protected categories in your firm-wide non-discrimination and anti-harassment policies.
- Process: Establish Gender Transition Guidelines** (page 26)  
Institute protocols for gender transitions that clearly delineate responsibilities and expectations of transitioning employees, their supervisors, colleagues and other staff. Utilize senior management to demonstrate the organization’s support for the employee.
- Education & Compliance: Provide Information and Training** (page 27)  
Incorporate education about gender identity and gender expression in diversity and Equal Employment Opportunity compliance training programs.
- Conversations: Ensure Employee’s Privacy** (page 29)  
Keep the employee’s health status private and confidential, limited to the fewest people necessary and, to the extent possible, limited to Human Resources professionals. Even in these parameters, discussions about specific medical treatments or care should be limited to need-to-know information.
- Documentation: Update Personnel Records** (page 30)  
Change a transitioning employee’s name and gender in all personnel and administrative records, including internal and external personnel directories, e-mail address and business cards.
- Facilities: Grant Restroom and Locker Room Access according to an Employee’s Full-time Gender Presentation** (page 33)  
Permit an employee to use sex-segregated facilities that correspond to his/her full-time gender presentation, regardless of what stage that person is in terms of his/her overall transition process.
- Dress Codes: Make Dress Codes Gender-Neutral and Apply Consistently** (page 35)  
Dress codes should be modified to avoid gender stereotypes and should apply consistently to all employees. Transgender employees may dress consistently in accordance with their full-time gender presentation.
- Benefits: Remove Discriminatory Health Insurance Exclusions** (page 36)  
Medically necessary treatments and procedures, such as those defined by the World Professional Association for Transgender Health’s Standards of Care for Gender Identity Disorders, should be included in employer-provided healthcare and short-term disability coverage.

## **POLICIES: INCLUDE “GENDER IDENTITY OR EXPRESSION” AS A PROTECTED CATEGORY**

*Prohibit discrimination against transgender employees by including “gender identity or expression” or “gender identity” among the list of protected categories in your firm-wide non-discrimination and anti-harassment policies.*

Employment policies that delineate protected categories — especially the primary non-discrimination or Equal Employment Opportunity policy — must include the term “gender identity or expression” or “gender identity.” Non-discrimination policies should be included in employee handbooks and be easily accessible to employees, suppliers, clients and customers. This can be accomplished by prominently including policies on the business’ web site. If applicable, make sure to clearly communicate to your customer-facing employees how your non-discrimination policies apply to customers.

*“Many employers are changing their Equal Employment Opportunity policies to include gender identity or expression because it makes good business sense to create an inclusive workplace environment — not only for recruiting purposes, but also for internal morale and external relationships with clients and other business partners. It also shows that the employer is taking its diversity initiatives seriously. They are not just talking the talk, but walking the walk. But employers are also changing their EEO policies because they have recognized that state and local governments, and the courts, are providing increasing legal protections to individuals on the basis of gender identity or expression.”*

— John P. Isa, member of the HRC Business Council and employment attorney at **Paul, Hastings, Janofsky & Walker LLP**<sup>41</sup>

### **“GENDER IDENTITY OR EXPRESSION” VS. “GENDER IDENTITY”**

Although a person’s gender expression, or external expression of gender, differs from his or her gender identity, or internal sense of gender, in law and policy the term “gender identity” is often defined or at least understood to include a person’s gender expression. To ensure that expectations are clearly communicated to employees and potential applicants, employers should use the term **“gender identity or expression”** in policies and other communications.

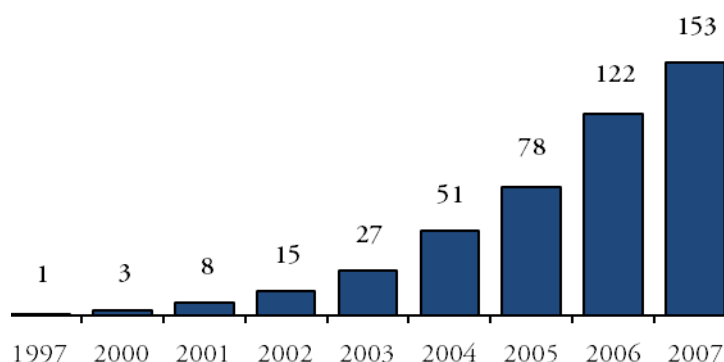
## TRANSGENER INCLUSION IN THE PRIVATE SECTOR

The first business to include “gender identity” in its non-discrimination policy was **Lucent Technologies Inc.** in 1997. Since then, businesses have rapidly added protections based on gender identity, including the first aerospace and defense, automotive, business services and oil and gas companies in 2005. Today, there are businesses in virtually every U.S. industry that include protections for transgender employees.

As of April 2008, the Human Rights Campaign Foundation was aware of hundreds of U.S. private sector (non-governmental) employers that had added gender identity protections, including:

- 354 private sector employers, including
  - 153 Fortune 500 companies;
- 86 colleges and universities, including
  - 46 of the top 100 *U.S. News and World Report* colleges and universities and
  - all eight Ivy League schools; and
- 22 non-profit organizations.

**Figure 4. Number of Fortune 500 companies with gender identity in non-discrimination policy, by year.**



### GLBT Equality at the Fortune 500

<http://www.hrc.org/issues/6989.htm>

### Employers that Prohibit Gender Identity Discrimination

[http://www.hrc.org/issues/search\\_employers.htm](http://www.hrc.org/issues/search_employers.htm)

## IBM CORP.: WORKFORCE DIVERSITY POLICY

IBM's non-discrimination policy, which includes the term "gender identity or expression," has been in effect since January 1, 2003 and is available on the company's website<sup>42</sup>:

"The employees of IBM represent a talented and diverse workforce. Achieving the full potential of this diversity is a business priority that is fundamental to our competitive success. A key element in our workforce diversity programs is IBM's long-standing commitment to equal opportunity.

Business activities such as hiring, promotion and compensation of employees are conducted without regard to race, color, religion, gender, **gender identity or expression**, sexual orientation, national origin, disability or age. These business activities and the design and administration of IBM benefit plans comply with all applicable laws, including those dealing with equal opportunity. For qualified people with disabilities, IBM makes workplace accommodations that comply with applicable laws, and that IBM determines are reasonable and needed for effective job performance. In respecting and valuing the diversity among our employees, and all those with whom we do business, managers are expected to ensure a working environment that is free of all forms of harassment.

This policy is based on sound business judgment and anchored in our IBM principles. Every manager in IBM is expected to abide by our policy, and all applicable laws on this subject, and to uphold IBM's commitment to workforce diversity."

IBM not only has a worldwide non-discrimination policy prohibiting discrimination based on gender identity or expression, it also provides comprehensive insurance coverage and care through its self-funded insurance program (see "*Benefits: Remove Discriminatory Health Insurance Exclusions*" on page 36).



### Sample Equal Employment Opportunity Policies

<http://www.hrc.org/issues/4850.htm>

## FREQUENTLY ASKED QUESTIONS

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### WHY SHOULD WE AMEND OUR POLICIES FOR A SMALL NUMBER OF PEOPLE?

The fact that the transgender population is relatively small does not justify ignoring workplace discrimination against people based on gender identity. Not only is workplace discrimination wrong, but unchecked discrimination in the workplace on the basis of non-job-related characteristics distracts employees — including coworkers — from actually doing their job. Furthermore, while an employer may not be aware of having any transgender employees, it may very well have undisclosed transgender employees or employees with transgender family members (see "*Transgender Population*" on page 4).

## WHAT ABOUT RESTROOMS?

Restroom access should be granted based on an employee's full-time gender presentation. Coworkers not comfortable with a transgender employee's use of a restroom may use an alternate restroom. Transitioning employees may opt to use a single-occupant restroom for a temporary period, but should not be required to do so permanently (see "*Facilities: Grant Restroom and Locker Room Access according to an Employee's Full-time Gender Presentation*" on page 33).

## WHAT ABOUT TRANSGENDER PEOPLE WHO DON'T TRANSITION, OR OTHER FORMS OF GENDER EXPRESSION?

As this publication focuses primarily on people who have or who plan to transition genders, an employer should generally defer to an employee's full-time gender presentation in the application of its policies and expectations of employees, such as dress codes and use of facilities. Employers have the right to require appropriate dress, grooming and appearance in the workplace for reasonable business purposes, especially where matters of safety are concerned, but such standards should avoid gender stereotypes (see "*Dress Codes: Make Dress Codes Gender-Neutral and Apply Consistently*" on page 35).

Although some employers have developed guidelines for certain gender-variant employees and employees who cross-dress, these are practices the majority of employers have not yet approached. Nonetheless, younger employees entering the workforce today are, by all accounts, increasingly comfortable with gender-variance and will likely raise these issues with their employers.

## HOW MUCH WILL IT COST TO AMEND OUR POLICIES?

Expenses associated with amending employment policies are negligible, according to employers that have done so already. Costs are primarily driven by staff time and resources during the planning and implementation phases of amending the policies. Most employers will consider these costs part of the normal overhead associated with any policy consideration.

- **Human resources and legal staff time** to gather information to help the employer understand the implications of enacting the policy.
- **Diversity or human resources staff time** integrating gender identity-focused resources in diversity training materials.
- **Management or other staff time** required to complete diversity training programs. Training and education costs are integrated into firm-wide diversity training education.

Additional staff time will be required should an employee transition on the job. Staff time spent working with the employee is minimized by having comprehensive transition guidelines in place (see "*Process: Establish Gender Transition Guidelines*" on page 26).

## **WILL SOME EMPLOYEES VOICE RELIGIOUS OBJECTIONS OR OTHER CONCERNS?**

Employers have the right and responsibility to set an expectation of fair treatment of all employees. Some employees may not agree with the decision to protect transgender workers, just as they may not agree with other workplace policies. However, protections are not about changing people's beliefs, but rather preventing inappropriate workplace behavior and allowing all employees to do their jobs. Most employers find that when they consistently iterate this message, workplace discontent with non-discrimination policies dissipates. Employers can often reduce employee discomfort and encourage further understanding through training and education.

*"We're not asking them to change their personal beliefs; we're asking them to respect their colleagues. We've been consistent in our messaging to employees so they know what they need to do to continue to work here."*

— Ben Hladilek, Human Resources business partner at J.P. Morgan Chase<sup>43</sup>

## **WILL SOME CUSTOMERS VOICE RELIGIOUS OBJECTIONS OR OTHER CONCERNS?**

Some customers may express concerns about the policy change or if they encounter a transgender employee. Employers should prepare appropriate protocols for addressing potential negative customer reactions that emphasize fairness, rather than changing peoples' beliefs.

Some anti-GLBT political organizations have attempted to damage businesses' reputations because of their inclusive policies. Although such efforts have sometimes garnered media attention, no empirical evidence suggests any significant impact directly attributed to them. Public opinion in the United States continues to overwhelmingly favor policies and practices that treat all employees equally (see "*Public Opinion*" on page 19).



### **Responding to negative reactions to GLBT inclusion**

<http://www.hrc.org/issues/4787.htm>



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### **Employment Policies: Adding Gender Identity as a Protected Category**

<http://www.hrc.org/issues/9610.htm>

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## PROCESS: ESTABLISH GENDER TRANSITION GUIDELINES

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*Institute protocols for gender transitions that clearly delineate responsibilities and expectations of transitioning employees, their supervisors, colleagues and other staff. Utilize senior management to demonstrate the organization's support for the employee.*

Workplace transition guidelines should be flexible enough to tailor to specific needs of a transitioning employee, while specific enough to provide a consistent framework that eliminates confusion and potential mismanagement. For example, one employee may prefer a quick start in which all his/her co-workers and peers are informed about the transition at the end of the work week, and comes to work the following week presenting in his/her new gender role. Another employee may prefer a more gradual transition, in which colleagues are notified of the transition plan, but the employee does not actually come to work in his/her new role for several weeks. However, in both cases, the same designated contact in human resources is responsible for helping each transitioning employee and his/her supervisor manage the workplace transition process.

Guidelines should address:

- who in the business is charged with helping a transitioning employee manage his/her workplace transition;
- what a transitioning employee can expect from management;
- what management's expectations are for staff, transitioning employees, and any existing GLBT employee resource group in facilitating a successful workplace transition; and
- what the general procedure is for implementing transition-related workplace changes, such as adjusting personnel and administrative records, as well as a communication plan for coworkers and clients.

*"In the absence of a [gender transition plan]... managers don't know what to do, and that can lead to grievances and lawsuits."*

— Dr. Jillian Todd Weiss, workplace diversity consultant and author of *Transgender Workplace Diversity* and the blog [transworkplace.blogspot.com](http://transworkplace.blogspot.com)

When announcing an employee's plan to transition, utilizing senior management can send a strong message of support and sets the tone for the business' expectations of staff going forward. Some employers assign a senior executive to act as a "sponsor" for the transitioning employee to help communicate top-down inclusive messages and expectations. Managers should reiterate these messages regularly. The desire to minimize disruption from the day-to-day routine and send the message that business will continue "as usual" should be carefully balanced with coworkers' educational needs.

*"Having transition guidelines in place sends a powerful message to transitioning employees, their management and co-workers: You are not alone. Help is available when you need it. Chevron's transition guidelines provide a ready framework to help facilitate the process by managing expectations, answering questions, identifying resources, reducing stress and letting everyone get back to work."*

— Mike Craig, President, Chevron PRIDE employee network and principle author of Chevron's transition guidebook, "Transgender @ Chevron"<sup>44</sup>



**Gender Transition Guidelines (Including Sample Guidelines)**

<http://www.hrc.org/issues/4849.htm>

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## **EDUCATION & COMPLIANCE: PROVIDE INFORMATION AND TRAINING**

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*Incorporate education about gender identity and gender expression in diversity and Equal Employment Opportunity compliance training programs.*

To ensure compliance with employment policies, all employees should at a minimum have clear guidance regarding appropriate workplace behavior and the consequences of failing to comply with anti-discrimination policies that include gender identity.

Education and training about gender identity can take the form of small, informal discussions, modules that are incorporated into a larger diversity training curriculum, or full-fledged training and educational programs on transgender issues conducted by outside trainers and facilitators. Communication and diversity training regarding gender identity in the workplace should be comparable to other policy announcements and training initiatives. For instance, if an employer provides online harassment training that incorporates race and sex, it should also incorporate gender identity.

Supervisory employees should receive diversity training that includes clear examples of discrimination based on gender identity shortly after starting employment and on a regular basis thereafter (e.g.: every two years, as required by law for California-based employers). When an employee transitions at work, these expectations should be restated (see “*Process: Establish Gender Transition Guidelines*” on page 26).

*“Leadership is the most important element for change, and that includes fostering workplaces that have an inclusive culture and that enhance cross-cultural awareness and skills through communication, training, and education. This is the starting point for any meaningful change in creating fair workplaces.”*

— Freada Kapur Klein, *Giving Notice: Why the Best and the Brightest Leave the Workplace and How You can Help Them Stay*<sup>45</sup>

When someone transitions on the job, in-person training with the employee’s managers and colleagues who work directly with the transitioning employee is important. Here, management has an opportunity not only to provide education on transgender issues, but also to reiterate expectations of workplace fairness for all employees. Training should ideally be facilitated by someone who has strong experience with transgender issues and experience presenting these issues with employers. Although potentially illuminating, utilizing a therapist or other mental health care provider can unnecessarily stigmatize training efforts; similarly, utilizing a provider close to the transitioning employee might inadvertently invade the employee’s privacy.

*“Everyone transitions when a transsexual person comes out in the workplace. Transition is not just a practical process, but it is inherently an emotional and psychological process for everyone.”*

— Moonhawk River Stone<sup>46</sup>

The extent of communication and training required will be different for the audience being trained. For example, it may be particularly important to emphasize to board members, as fiduciaries of an organization, how the policy change affects the firm’s competitive advantage or mitigates risk. Meanwhile, employees who work on the same team or in the same unit as a transitioning colleague will require more background information about transgender issues and unambiguous instruction regarding how the policy will be implemented.

See “*Appendix B: Diversity Trainers and Organizations That Specialize in Transgender Issues*” on page 45 for a list of diversity trainers and resources that can assist in developing communications and training appropriate to your workplace.



## CONVERSATIONS: ENSURE EMPLOYEE'S PRIVACY

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*Keep the employee's health status private and confidential, limited to the fewest people necessary and, to the extent possible, limited to Human Resources professionals. Even in these parameters, discussions about specific medical treatments or care should be limited to need-to-know information.*

With few exceptions, employers do not need to know about a transgender employee's medical treatments beyond planning for potential medical leave for transitioning employees. However, some detailed conversations may become necessary in the process of attaining adequate insurance coverage from an employee health plan.

State and federal laws, including the Health Insurance Portability and Accountability Act (HIPAA), govern the privacy of individual health information.<sup>47</sup> While healthcare providers and plans — rather than employers — are bound by the privacy obligations under HIPAA, more robust state laws, and a general interest in maintaining employee privacy, should discourage most inquiries into a transgender employee's medical status as well as disclosure of any voluntarily-provided health information to unnecessary staff.

### COWORKERS AND CLIENTS

Although the transgender status of an employee that transitions on the job becomes a more or less “public” matter, discussions about the employee's personal situation and medical treatment — including surgical procedures or hormone use — should be off-limits in the workplace.

Some transgender people may feel more comfortable having these frank discussions with their colleagues than others; having these discussions should be left to their discretion. Provide the employee with a standard statement such as: “Like other health matters, management has asked me to keep medical conversations to a minimum.”

*“When an employee is undergoing a transition that involves the cooperation of others in referring to him or her with the appropriate pronoun, the transition itself becomes a matter of public knowledge, but personal or intimate details about an individual's transition are the employee's personal business and as such are entitled to confidentiality. ... No employee should be required to explain or justify her or his personal life or medical treatment in the workplace.”*

— Jamison Green, workplace diversity trainer and former member of the HRC Business Council<sup>48</sup>

When a transgender employee first begins employment with an employer, or moves to a different part of the same organization with new colleagues (such as a transfer from one state to another), that person may never have a need to disclose their transgender status to their employer (see “*Stealth Transgender Employees*” on page 5).

Employers should guide managers to ensure confidentiality in the event that they learn of an employee's transgender status from other sources in the normal course of doing business, rather than from the employee him or herself.



**Ensuring Transgender Employees' Privacy**

<http://www.hrc.org/issues/9599.htm>

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## DOCUMENTATION: UPDATE PERSONNEL RECORDS

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*Change a transitioning employee's name and gender in all personnel and administrative records, including internal and external personnel directories, e-mail address and business cards.*

Recognize a transgender employee's preferred name and gender to the greatest possible extent. Develop systems for addressing situations in which an employee's gender presentation does not match legal documents.

Laws regarding changes to gender markers in credit reports and government-issued identification documents vary from state to state and jurisdiction to jurisdiction. Many jurisdictions require proof of completion of specific medical procedures before personal documents — such as drivers' licenses and birth certificates — can be updated to reflect a person's new gender.<sup>49</sup>

In October 2002, the Social Security Administration instituted more stringent rules for changing gender markers in SSA records, requiring applicants to provide medical records or other documentation showing that sex reassignment surgery has been completed. The IRS or Social Security Administration may contact employers or managers directly if an employee's name or gender does not match in these systems. If an employee or the employer does receive a "no match" letter, resubmit the employee's data without gender. In order to avoid the "no match" process entirely, refrain from reporting the gender marker, which is optional information for SSA number verification purposes.



**National Center for Transgender Equality "No Match" Resource**  
<http://nctequality.org/Issues/nomatch.html>

## HEALTH INSURANCE RECORDS

Due to the often gender-specific nature of medical care, employers should defer to the gender marker that the transgender employee, in consultation with his or her medical provider, prefers to use for insurance purposes. For example, an employee listed as male might be denied coverage for ovarian cancer (see "*Discrimination in Health Insurance*" on page 36).

## LICENSING AND PROFESSIONAL CREDENTIALS

Certain professionals are required to obtain official certification or licensing in order to do their jobs. For example, pilots in the airline industry must obtain Federal Aviation Administration pilot certification, and some aerospace and defense employees are required to obtain security clearances. Given the overlapping federal, state and local regulatory issues regarding professional licensing, employers should obtain legal counsel to consider how best to address this issue.

Ensure that any health information that must be shared by the employee to attain appropriate certification or licensing will be kept confidential and restricted to the fewest necessary people, and kept within the Human Resources department, if possible.

A diversity executive at American Airlines told HRC that the issue of credentials not matching gender presentation came up when some of the company's pilots transitioned. Because the Federal Aviation Administration regulates pilot certification, the company tried to educate the FAA about the needs of their employees. The company has successfully seen several pilots through the transition and certification process, although employees taking certain medications during transition are prohibited from flying.

## COLLECTING GENDER DATA

For reporting purposes, employers tend to “over-ask” for demographic data such as age, gender and ethnicity. Particularly when asked for something related to work, the question of gender with seemingly simple “female” and “male” options can pose a challenge for transgender people, particularly those that are in the process of or are considering transitioning genders. Some may be concerned about how that data may be used or compared to personal records, or they may feel limited by the “female” or “male” options. When evaluating whether to ask employees about gender on non-essential forms, employers should consider:

- What is the business rationale for asking about gender on the particular form?
- How does asking for the data relate to your organization's overall diversity strategy?
- How will that data be used, protected and reported? What legal restrictions might there be on collection or storage of demographic data, in the U.S. or globally?

If the data is not essential, consider removing the question, make sure the question is clearly optional (particularly for online forms) or allow people to self-identify by asking an open-ended question.

Below are examples of how some employers have attempted to capture gender-specific data from employees, followed by examples of how some employers have attempted to capture gender identity data to gauge the transgender population in their workforce. Although the most unwieldy option for data collection and reporting purposes, option 3 is generally preferable since it allows people to self-identify.

### *What is your gender?*

#### **Option 1 (most restrictive):**

If collecting restrictive gender data is necessary, allow employees to identify in accordance with their gender presentation whenever possible.

- Female
- Male

#### **Option 2 (less restrictive):**

This option can draw unnecessary attention to transgender status.

- Female
- Male
- Other (please specify): \_\_\_\_\_

#### **Option 3 (least restrictive):**

- Gender? \_\_\_\_\_

### *What is your gender identity?*

#### **Option 4:**

- Female
- Female to male transgender
- Male
- Male to female transgender
- Not sure
- Other (please specify): \_\_\_\_\_

#### **Option 5:**

- Female
- Genderqueer/Androgynous
- Intersex
- Male
- Transgender
- Transsexual
- Cross-dresser
- FTM (female-to-male)
- MTF (male-to-female)
- Other (please specify)

Because sexual orientation and gender identity are distinct, transgender status should generally not be asked in the same question as sexual orientation. However, asking whether or not a person identifies as part of the larger gay, lesbian, bisexual and transgender community might be appropriate, depending on the situation.

You should *not* ask:

*Do you identify as/Are you...?*

- Bisexual
- Gay
- Lesbian
- Transgender

You might ask:

*Do you identify as GLBT?*

- Yes
- No



**Self-Identification of GLBT Employees in Surveys and Forms**

<http://www.hrc.org/issues/8460.htm>



**Personnel Documentation for Transgender Employees**

<http://www.hrc.org/issues/9592.htm>

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## FACILITIES: GRANT RESTROOM AND LOCKER ROOM ACCESS ACCORDING TO AN EMPLOYEE'S FULL-TIME GENDER PRESENTATION

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*Permit an employee to use sex-segregated facilities that correspond to his/her full-time gender presentation, regardless of what stage that person is in terms of his/her overall transition process.*

Although using restrooms can be uncomfortable for many people, most people take reasonable access to restroom facilities for granted. However, transgender people often face the additional burden of being confronted or questioned about which gender's restroom they should use. Not having reasonable access to restrooms is a tremendous distraction that no employer should impose on its employees.

*“Whenever he is in an airport, Shana Agid, a 30-year-old transgender art student, finds himself praying he can hold out until he gets on the airplane. ‘Day after day, it gets a little old,’ he said of a ritual he confronts at least a half-dozen times a day. ‘It feels ridiculous to tell people as a grown person that you have trouble going to the bathroom.’”*  
— “A Quest for a Restroom that’s Neither Men’s Room nor Women’s Room,”  
The New York Times<sup>50</sup>

Employers should grant unrestricted restroom access and use according to an employee's full-time gender presentation.<sup>51</sup> This is straightforward:

- Employees may use the restrooms that correspond with their full-time gender presentation. *An employee should never be required to use the restroom of his/her designated sex at birth once he /she has begun transitioning and has changed their full-time gender presentation.*
- A transitioning employee may opt to use single-occupancy or unisex facilities, if available and reasonably accessible, for some temporary period during the transition process, but should not be required to do so permanently.
- Coworkers uncomfortable with a transgender employee's use of the same restroom may use separate restroom facilities.

Employers have many options to make reasonable restroom access available:

- **Multiple-occupant, gender-segregated restroom facilities with lockable single-occupant stalls.**  
These are the most common type of bathroom, and should work for transgender employees and their colleagues. However, transgender people are often harassed for being perceived to be of a different gender from a bathroom's gender designation, particularly in public settings where the restrooms' users may not be accustomed to transgender people. Gender-segregated facilities should utilize enhanced privacy features and be accompanied by a single-occupant, gender-neutral facility when possible.
- **Single-occupant, gender-neutral restroom facilities.**  
These one-room facilities are equipped with a sink, toilet and optional urinal, and typically exist in the form of “family access” bathrooms and bathrooms accessible to people with disabilities and are also available on airplanes, buses and at public events. Single-occupant restrooms should not be restricted to a specific gender, which can cause confusion when people are perceived to be of a different gender from the bathroom's designation. Restricting single-occupant restrooms by gender can also unnecessarily cause people of the same gender to wait even while the restroom for the other gender is unoccupied.
- **Multiple-occupant, gender-neutral restroom facilities with lockable single-occupant stalls.**  
These facilities are generally modified versions of gender-segregated restroom facilities with

enhanced privacy features. They help avoid confusion that can be caused if a person is perceived to be of a different gender from a bathroom's gender designation.

Users of multiple-occupant restrooms might appreciate the following privacy enhancements:

- Install flaps on the outer edge of stall doors to cover the gap between the door and the stall wall.
- Extend stall doors and walls from floor to ceiling.
- Extend privacy dividers between urinals further out from the wall, and to a higher level.

**Locker Rooms.** Ensure private shower and changing areas in locker rooms and other facilities using stalls or curtains. If this is not possible, provide the employee with alternative accommodations that maintain respect and dignity, such as:

- Use of a private area within the public area, such as a shower stall with a door or an area separated by a curtain;
- A separate changing schedule in the public area; or
- Use of a nearby private area, such as a restroom.

No single solution will work for every worksite and, as a result, employers handle restroom access issues with respect to their known transgender employees in a variety of ways. Some employers implement workplace-wide restroom access policies, while others leave it to the local facility or office to create a solution that fits the needs of the unit and the employee. Some employers have modified real estate acquisition guidelines to improve availability of single-occupant unisex restrooms at all worksites. All employers need to find solutions that are safe, convenient and respect transgender employees; working with your transgender employees to devise a practical and dignified solution to restroom access issues is essential.

### WHAT IS THE EMPLOYER'S OBLIGATION REGARDING RESTROOMS?

In the United States, employers are required to provide workers reasonable access to restroom facilities. The U.S. Department of Labor's Occupational Safety and Health Administration requires that employers "make toilet facilities available so that employees can use them when they need to do so," and "the employer may not impose unreasonable restrictions on employee use of the facilities."<sup>52</sup> Some jurisdictions specifically provide for gender-neutral restroom access (see "*Employment Non-Discrimination Laws & Ordinances*" on page 8).



**Restroom Access for Transgender Employees**

<http://www.hrc.org/issues/9559.htm>

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## **DRESS CODES: MAKE DRESS CODES GENDER-NEUTRAL AND APPLY CONSISTENTLY**

*Dress codes should be modified to avoid gender stereotypes and should apply consistently to all employees. Transgender employees may dress consistently in accordance with their full-time gender presentation.*

If an employer has a dress code, it should modify it to avoid gender stereotypes and enforce it consistently. Requiring men to wear suits and women to wear skirts or dresses, while legal, is based on gender stereotypes. Alternatively, codes that require attire professionally appropriate to the office or unit in which an employee works are gender-neutral. Employers can legally implement gender-specific dress codes as long as they are not arbitrarily enforced and do not favor or affect one gender over another.<sup>53</sup>

Generally speaking, employers have a right to establish employee dress and grooming guidelines during work hours if they are reasonable and serve a legitimate business purpose. Such purposes include:

- Maintaining a certain image with customers and competitors,
- Safety, such as requiring employees to wear closed-toe shoes, goggles or gloves, and
- Visibility, requiring employees to wear uniforms so that they are clearly recognizable to the public (e.g.: law enforcement).

In the vast majority of cases, employers do not have the right to monitor or regulate employees' off-the-job conduct; dress codes should not apply to activities outside of work. While some transgender employees may cross-dress outside of work — including cross-dressers and employees considering or beginning the process of transitioning genders — the employer should neither inquire about such activity nor take adverse action against such an employee should it learn about off-the-job cross-dressing from another source.



**Transgender Employees and Dress Codes**  
<http://www.hrc.org/issues/9590.htm>

## **BENEFITS: REMOVE DISCRIMINATORY HEALTH INSURANCE EXCLUSIONS**

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*Medically necessary treatments and procedures, such as those defined by the World Professional Association for Transgender Health's Standards of Care for Gender Identity Disorders, should be included in employer-provided healthcare and short-term disability coverage.*

Transgender people face many forms of discrimination in the provision of health insurance and healthcare. Unless an employer operates its own healthcare centers or clinics for employees, it has relatively little control over the provision of healthcare. The Human Rights Campaign Foundation, in collaboration with the Gay and Lesbian Medical Association, provide resources for hospitals on transgender inclusion through the Healthcare Equality Index.



**Healthcare Equality Index**

<http://www.hrc.org/hei>

Employers, as consumers of group health insurance products, can advocate on behalf of the transgender people insured on their group health insurance plans. Employers should work with their insurance carriers or administrators to remove transgender exclusions and provide comprehensive transgender-inclusive insurance coverage.

### **DISCRIMINATION IN HEALTH INSURANCE**

Due to the way that most health insurance contracts are written, transgender people can be denied health insurance coverage, often irrespective of whether those needs are related to transitioning. Not all transgender people have the same medical needs — they may have already transitioned, or they may not transition at all. Transgender people may even be denied medical treatment as fundamental as mental health counseling, which can lead to stress, depression, suicide attempts, poor work performance and over-utilization of unrelated services and benefits that do not address the root causes of a person's health status.

Discrimination in health insurance generally takes one of the following forms:

- **Denial of health insurance coverage**, where someone is denied any health insurance on the basis of gender identity. The Transgender Law Center has documented cases in which health insurance companies and medical providers have denied coverage to transgender people when they became aware of an applicant's transgender status or prior treatment and medical history related to gender transition. In 2007, the American Medical Association declared its opposition to this practice.<sup>54</sup>
- **Denial of coverage for claims related to gender transition**, including claims arising from complications from medical treatment for gender transition.
- **Denial of coverage for claims for gender-specific care** based on the person's gender marker on insurance. For example, a male-to-female person who develops prostate cancer, or a female-to-male person who develops ovarian cancer.
- **Denial of coverage for claims unrelated to gender transition**. For example, an insurer argues that a medical concern is the direct or indirect result of transgender-related treatment such as hormone therapy.

According to a 1999 study by the San Francisco Department of Public Health, more than 50 percent of transgender people did not have any form of health insurance.<sup>55</sup> According to a 2003 survey conducted by the National Center for Lesbian Rights and the Transgender Law Center, more than 30 percent of

transgender San Franciscans indicated that they had been discriminated against while trying to access healthcare.<sup>56</sup>

### GROWING SUPPORT FOR HEALTH INSURANCE COVERAGE

The American Medical Association recently joined the movement to end discrimination in health insurance for transgender people by passing the following resolution at their annual meeting in June 2008:

“RESOLVED, That our American Medical Association support public and private health insurance coverage for treatment of gender identity disorder as recommended by a physician.”<sup>57</sup>

### TRANSGENDER INSURANCE EXCLUSION

The vast majority of commercial health insurance plans in the United States exclude all or most coverage for treatment related to gender transition. This “transgender exclusion” denies coverage for claims for treatments such as psychological counseling for initial diagnosis and ongoing transition assistance, hormone replacement therapy, doctor’s office visits to monitor hormone replacement therapy and surgeries related to sex reassignment.<sup>58</sup> Sometimes the exclusion’s language is sufficiently broad to even deny coverage to a transgender person for treatments unrelated to transitioning.

Exclusions are generally found in a benefits plan summary document, which is available to all employees and applicants. Some examples of exclusionary language that should be removed include:

- “Coverage is not provided for the following charges: ...Those for or related to sex change surgery or to any treatment of gender identity disorders.”<sup>59</sup>
- “For all Medical Benefits shown in the Schedule of Benefits, a charge for the following is not covered: ... Care, services or treatment for transsexualism, gender dysphoria or sexual reassignment or change, including medications, implants, hormone therapy, surgery, medical or psychiatric treatment.”<sup>60</sup>
- “Exceptions and Exclusions. No benefits are provided under this Plan for the following: ... Services and supplies for the treatment of and/or related to gender dysphoria or reverse sterilization.”<sup>61</sup>

### QUESTIONS OF MEDICAL NECESSITY AND OTHER FORMS OF DISCRIMINATION IN INSURANCE

Even providers with less restrictive language or intentionally inclusive policies have denied insurance claims for transgender-related care on the grounds that a treatment or procedure is “cosmetic,” “experimental” or not “medically necessary.” Most definitions of medical necessity, however, are generally vague. One state employees’ health and prescription drug benefits plan defines it as follows:

“**Medically Necessary** care and treatment is recommended or approved by a Physician; is consistent with the patient’s condition or accepted standards of good medical practice; is medically proven to be effective treatment of the condition; is not performed mainly for the convenience of the patient or provider; is not conducted for research purposes; and is the most appropriate level of services which can be safely provided to the patient.”<sup>62</sup>

Decades of experience with the Standards of Care show that gender transitions and related care are accepted, good medical practice and effective treatment (see “*Standards of Care*” on page 7).

“Sex reassignment, properly indicated and performed as provided by the Standards of Care, has proven to be beneficial and effective in the treatment of individuals with transsexualism, gender identity disorder, and/or gender dysphoria. Sex reassignment plays an undisputed role in contributing toward favorable outcomes, and comprises Real Life Experience, legal name and

sex change on identity documents, as well as medically necessary hormone treatment, counseling, psychotherapy, and other medical procedures...

The medical procedures attendant to sex reassignment are not “cosmetic” or “elective” or for the mere convenience of the patient. These reconstructive procedures are not optional in any meaningful sense, but are understood to be medically necessary for the treatment of the diagnosed condition.”

— WPATH Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.<sup>63</sup>

## TREATMENT COST AND UTILIZATION

The costs of providing insurance coverage for transgender-related care can be minimal and vary depending on:

- **The number of employees and dependents who make claims for coverage.**  
Individual employers indicate that the number of employees taking advantage of related health insurance benefits is actually quite small.
- **The services and procedures requested.**  
The Standards of Care are useful for anticipating which treatments might be requested.
- **The employer's total number of employees.**  
This affects the additional cost it would incur and pass back to employees to cover the new benefits.

According to Mary Ann Horton, affiliated with Transgender At Work, the average costs associated with surgical transition are approximately \$25,000 over a five-year term of employment. This estimate includes \$5,000 per year for two years of counseling with one hourly session per week, \$10,000 for the surgery itself, and \$1,000 per year over five years for prescription drugs.<sup>64</sup> Horton writes that “most male-to-female transsexuals go to doctors charging between \$8,000 and \$13,000 for the surgery itself. ... Most female-to-male transsexuals have only [chest] surgery and possibly a hysterectomy, costing from \$4,000 to \$10,000. Only a few complete the [genital] surgery, [which can cost] ... up to \$50,000.”<sup>65</sup>

Estimates such as these are debated in that it may be safe to reason that providing comprehensive insurance would enable more people to obtain the surgery, and costs may vary depending on where services are obtained.

Depending on an employer's current healthcare costs, these numbers can appear high. However, when compared to the costs of other more common healthcare expenditures, the costs of coverage specific to transgender people's needs are comparable, or lower. For example, according to the American Association of Health Plans, the most common disease management programs in health plans are those for diabetes, asthma, and congestive heart failure.<sup>66</sup> The American Diabetes Association reports that the per capita annual cost of healthcare for people with diabetes was \$13,243 in 2002.<sup>67</sup>

## CASE STUDY: CITY AND COUNTY OF SAN FRANCISCO'S TRANSGENDER HEALTH BENEFITS PROGRAM

In July 2001, the City and County of San Francisco made history by becoming the first U.S. jurisdiction and major employer to remove transgender access exclusions in its employee and dependent health plans. The plan, as it was first made available in 2001, reflected concerns about cost and utilization — concerns since proven unfounded.

The health plan covers transition-related treatment including surgery performed by a qualified provider as part of a treatment plan conforming to the WPATH Standards of Care. Furthermore, plan participants who require psychotherapy for gender identity disorders or transsexualism, and/or hormones, may receive them under routine psychotherapy and pharmacy benefits.

### 2001

San Francisco originally administered its transgender benefits through the city's self-funded preferred provider organization, Beech Street Corp. The city's HMO plan providers were not able to offer such coverage until they received authorization from the Department of Managed Care that controls HMOs in California.

With more than 28,000 employees — 80,000 insured individuals including retirees and dependents — administrators originally anticipated as many as 35 people might use the benefits each year. Lifetime surgical benefits were capped at \$50,000 and required a standard \$250 deductible, after which the policy required a 15 percent co-pay in-network and 50 percent co-pay out-of-network. Eligibility to use the benefit was limited to employees, retirees or dependents who were members of the San Francisco Health Service System for more than one year.<sup>68</sup>

To cover expected additional costs associated with gender transition-related claims, all employees were charged an additional \$1.70 per month for health benefits.

### 2004

To comply with Department of Managed Care rules and ensure that equal benefits were provided to both female-to-male and male-to-female transsexuals, San Francisco raised the lifetime cap to \$75,000 and removed the requirement of one year of membership in the Health Service System. HMO coverage through Health Net, Kaiser Permanente and Blue Shield began as of July 1, 2004.<sup>69</sup>

At this point, San Francisco had collected \$4.5 million in surcharges to offset projected claims. But in the three years, the system had just 7 claims totaling \$156,000.<sup>70</sup> As a result, the per employee surcharge was lowered to \$1.16 per month.

### 2006

By 2006, the system had collected \$5.6 million in surcharges to offset 210 projected claims, and had paid out just \$386,417 on 39 claims. In July 2006, the per employee surcharges were dropped entirely.

*“Despite actuarial fears of over-utilization and a potentially expensive benefit, the Transgender Health Benefit Program has proven to be **appropriately accessed** and **undeniably more affordable** than other, often routinely covered, procedures.”*  
— 2006 letter from San Francisco's Human Rights Commission<sup>71</sup>

In other words, transgender people were not flocking to work for the city, and the cost of covering transgender employees' health needs was relatively inexpensive, compared to other health needs of San Francisco employees. Employees of the City and County of San Francisco and those employees' dependents may now access transgender specific treatments without the need for any plan members to pay any additional premiums, as they did the first few years the program was available.



**San Francisco City and County Transgender Health Benefit  
2006 Letter from Human Rights Commission**  
<http://www.hrc.org/issues/7782.htm>

### PRIVATE SECTOR IMPLEMENTATION OF INCLUSIVE COVERAGE

Since 2004, the HRC Foundation has asked employers whether they offer transgender health benefits without exclusion as part of its annual Corporate Equality Index survey. In 2008, 78 employers indicated that they provided insurance coverage without exclusion to their transgender employees for the purposes of medically supervised gender transitions; these employers had an average of 40,000 employees. Large corporations such as **American Express, Eastman Kodak, General Motors, Goldman Sachs, IBM, Johnson & Johnson, Microsoft** and **Nike** provide health benefits covering mental health counseling, hormone therapy, medical visits and surgical procedures, in addition to short-term leave for treatments related to gender transition or reassignment.

These employers are leading the way for others to provide insurance by exploring different options and methods of providing coverage. For example, IBM took a thoughtful and unique approach by bringing Dr. Marci Bowers, a leading male-to-female sex reassignment surgeon, into the company's network of in-plan providers. Additionally, HRC is aware of some employers that have provided travel benefits for treatment by experienced professionals otherwise unavailable where the employee lives.



**Transgender Wellness Benefits and the Corporate Equality Index**  
<http://www.hrc.org/issues/7644.htm>



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**Benefits for Transgender Employees and Dependents**  
<http://www.hrc.org/issues/4815.htm>

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## INSURANCE AVAILABILITY

Most employers purchase a commercial group health insurance plan, where the insurance company spreads risk among its group health insurance plans, which encompass multiple employers. The inclusive plans offered by these businesses are, to the knowledge of the Human Rights Campaign Foundation, self-insured, meaning that the business is sufficiently large and has enough employees for the business itself to assume all the risk of providing health insurance to its employees. Employers that self-insure still generally utilize the expertise of a large insurance company to administer the self-insured plan.

Smaller employers, which generally do not have the option to self-insure their health benefits, need to negotiate aggressively for inclusive benefits with their insurance providers. Insurance providers in certain states have begun making access to transgender-related care available through commercial plans — it is up to an employer to ask for coverage and often to educate an insurer about inclusive plans available elsewhere.

The earliest smaller employers that provided some form of coverage have apparently done so by providing a self-insured benefit outside of the standard commercial health insurance plan, with a lifetime maximum financial benefit. The Human Rights Campaign and the Whitman-Walker Clinic of Washington D.C. both implemented limited self-insured benefits along these lines within the last five years.

## SHORT-TERM DISABILITY AND LEAVE EXCLUSIONS

Separate from health insurance, employers often have greater control over short-term leave and other benefits that affect a transgender employee. According to a 2007 benefits survey conducted by the Society for Human Resource Management, 81 percent of respondents reported that their firms offered short-term disability, 88 percent offered long-term disability and 63 percent offered a paid time off plan in which sick, vacation and personal days are managed as a single basket.<sup>72</sup> Whether and to what extent an employer offers such benefits to employees is determined solely by the employer; medically necessary procedures in a gender transition should be treated the same as other criteria in requesting and granting such leave.

## PARTNERS & SPOUSES OF TRANSGENDER EMPLOYEES

Jurisdictions have different rules concerning changing gender markers on official documents. Courts have ruled inconsistently on the legal validity of marriages — either between same-sex or opposite-sex couples — entered into either before or after a transgender person has transitioned. One way to ensure that employees and their partners or spouses are treated equally is to extend domestic partner benefits to both opposite- and same-sex couples (see “*Transgender Family Members of Employees*” on page 5).



## APPENDIX A: RELATED PUBLICATIONS

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This list of resources is intended for informational purposes only. It does not constitute and should not be regarded as an endorsement by the Human Rights Campaign or the Human Rights Campaign Foundation.



### **Resources on Transgender Inclusion in the Workplace**

<http://www.hrc.org/issues/8993.htm>

### **Books and Videos on Transgender Issues**

<http://www.hrc.org/issues/3480.htm>

### **Medical, Legal & Workplace Issues for the Transsexual (1995)**

**Sheila Kirk, M.D. and Martine Rothblatt, J.D.**

This book provides the transsexual individual guidelines and assistance as he or she moves through this very special time in their lives, dissecting three distinct periods in which special problems should be addressed and discussed.

[http://www.ifge.org/books/medical\\_legal\\_workplace.htm](http://www.ifge.org/books/medical_legal_workplace.htm)

Web Resource

### **Transgender Equality: A Handbook for Activists and Policymakers (2000)**

**Paisley Currah, Shannon Minter and Jamison Green; The Policy Institute of the National Gay & Lesbian Task Force; National Center for Lesbian Rights**

A Handbook created by the National Gay and Lesbian Task to enable activists and lawmakers to better understand and advocate for transgender issues.

<http://www.thetaskforce.org/downloads/reports/reports/TransgenderEquality.pdf>

Web Resource

### **Transgender Workplace Diversity (2007)**

**Jillian Todd Weiss, J.D., Ph.D.**

Intended for professionals in human resources, diversity and law who are faced with issues of transgender workplace diversity in the United States, this book addresses transgender basics, gender identity law, policy issues and gender transition guidelines. It specifically sets forth what steps to take and what issues to consider when confronted with an employee who wishes to transition from one gender to another.

<http://www.amazon.com/Transgender-Workplace-Diversity-Communication-Professionals/dp/1419673289>

Paperback

**Transsexual Workers: An Employer’s Guide (1998)**

**Janis Walworth, M.S., Center for Gender Sanity**

Designed for managers, human resources personnel and other employment professionals, this book includes basic information about transsexualism, an explanation of the transition process, illustrative personal histories, information on relevant civil rights and disability laws, tips for managing difficult situations and a glossary. There are suggestions for dealing with coworkers' concerns, uncomfortable clients, the general public and the media. Common workplace issues, such as pronoun usage, dress codes, restroom use, employee transfers and health insurance, are addressed. A wider concept of transgender is also introduced as it pertains to cross-dressers, intersex people, post-transition transsexuals and others. A resource section lists helpful national and regional organizations, books, magazines and videos.

<http://www.gendersanity.com/empguide.shtml>

Web Resource

**True Selves: Understanding Transsexualism – For Families, Friends, Co-Workers, and Helping Professionals (1996)**

**Mildred L. Brown and Chloe Ann Rounsley**

This book paints a vivid portrait of conflicts transsexuals face on a daily basis — and the courage they must summon as they struggle to reveal their true being to themselves and others. *True Selves* offers valuable guidance for those who are struggling to understand these people and their situations.

<http://www.wiley.com/WileyCDA/WileyTitle/productCd-0787967025.html>

Paperback

**Working with Transsexuals: A Guide for Coworkers (1999)**

**Center for Gender Sanity**

This book contains information regarding transsexualism and the process of transition imbedded in the story of a transsexual woman who decides to transition on her job. Female-to-male issues are addressed by a transsexual man who speaks to her coworkers. Two chapters present questions frequently asked by coworkers and answers to them. Also included are photographs of transsexual professionals demonstrating that transsexuals in the workplace look pretty much like anyone else. Resources are offered for readers who want to access more in-depth information on this subject. The book contains a foreword by Marie Keller, Founder and Director of the Los Angeles Gender Center.

<http://www.gendersanity.com/cowguide.shtml>

Web Resource

## APPENDIX B: DIVERSITY TRAINERS AND ORGANIZATIONS THAT SPECIALIZE IN TRANSGENDER ISSUES

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Many of the organizations and people listed below provide multiple products and services.

This list of resources is intended for informational purposes only. It does not constitute and should not be regarded as an endorsement by the Human Rights Campaign or the Human Rights Campaign Foundation.



**Diversity Training on Sexual Orientation and Gender Identity**

<http://www.hrc.org/issues/7019.htm>

## CONSULTANTS

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### **Center for Gender Sanity**

Janis Walworth & Michele Kammerer  
360/398-2878  
director@gendersanity.com  
www.gendersanity.com

A consulting service for employees who plan to transition on the job, their co-workers and their employers.

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### **Jillian T. Weiss & Associates**

Jillian Todd Weiss, J.D., Ph.D.  
jtwassociates@gmail.com  
phobos.ramapo.edu/~jweiss/consult.htm

Dr. Weiss has worked successfully with Fortune 500 companies and large public agencies during the past few years. Her work has been featured in news stories by the Associated Press, Knight-Ridder News Service, the Society for Human Resource Management and Workforce Management Magazine. She is the author of *Transgender Workplace Diversity*, published in 2007 and also produces a blog on transgender workplace diversity for HR and diversity professionals at [transworkplace.blogspot.com](http://transworkplace.blogspot.com)

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### **RiverStone Consulting**

Moonhawk River Stone  
518/446-1261  
HawkRStone@aol.com

Moonhawk River Stone is a consultant to employees, employers, human resources professionals and employee resource groups regarding all aspects of gender transition in the workplace. He educates and trains on transgender issues, gender transition in the workplace, and has a private psychotherapy practice specializing in all aspects of transgender experience. He has successfully helped people transition for nearly 20 years. His book, *Making It Work: Successful Gender Transition in the Workplace*, was published in April 2004.

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### **Transgender Education Partnership**

info@transeducate.com  
www.transeducate.com

TransEducate.com and the Transgender Education Partnership were formed by Jamison Green and Donna Rose, internationally respected educators and advocates for the Transgender community with combined 50 years of business and management experience.

This partnership provides an opportunity for the trans community to educate about themselves, to form partnerships based on education, and to work with workplaces and organizations with regard to transgender issues.

## RESEARCH AND ADVOCACY ORGANIZATIONS

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### **Gay and Lesbian Advocates and Defenders (GLAD)**

Jennifer Levi, Senior Staff Attorney  
617/426-1350  
www.glad.org

New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity or expression. Litigates, advocates and educates in all areas of gay, lesbian, bisexual and transgender civil rights and the rights of people living with HIV. GLAD has a full-time legal staff and a network of cooperating attorneys across New England.

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### **Gender Education & Advocacy Inc.**

info@gender.org  
www.gender.org

A national organization providing web-based educational resources dedicated to the health, safety and civil rights of all gender-variant people.

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### **Gender Public Advocacy Coalition (GenderPAC)**

202/462-6610  
gpac@gpac.org  
www.gpac.org

A national advocacy organization working to ensure every American's right to a gender free from stereotypes, discrimination and violence, regardless of how they look, act or dress or how others perceive their sex or sexual orientation. The Workplace Fairness Project assists major corporations and unions in adding gender protection to their anti-discrimination policies.

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### **International Foundation for Gender Education**

781/899-2212  
info@ifge.org  
www.ifge.org

Founded in 1987, IFGE is a leading advocate and educational organization for promoting the self-definition and free expression of individual gender identity. Not a support group, it is an information provider and clearinghouse for referrals about anything that transgresses established social gender norms. IFGE maintains the most complete bookstore on the subject of transgenderism anywhere. It also publishes the leading magazine providing reasoned discussion of issues of gender expression and identity, including cross-dressing, transsexualism, FTM and MTF issues spanning health, family, medical, legal, workplace issues and more.

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**National Center for Lesbian Rights (NCLR)**

Shannon Minter, Legal Director  
415/392-6257  
www.nclrights.org

A national legal resource center with a primary commitment to advancing the rights and safety of lesbians and their families through a program of litigation, public policy advocacy, free legal advice and counseling, and public education. In addition, NCLR provides representation and resources to gay men and bisexual and transgender individuals on key issues that also significantly advance lesbian rights. Published with the National Gay and Lesbian Task Force Policy Institute *Transgender Equality: A Handbook for Activists and Policymakers*.

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**National Center for Transgender Equality (NCTE)**

202/903-0112  
ncte@nctequality.org  
www.nctequality.org

A social justice organization working to make transgender people safe from discrimination and violence, NCTE provides a national voice on fairness and equality for transgender and other gender-different people in Washington and provides resources and assistance to empower and strengthen localized efforts around the country.

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**National Gay and Lesbian Task Force (Task Force)**

Lisa Mottet, Transgender Civil Rights Project  
Legislative Lawyer  
202/639-6308  
lmottet@thetaskforce.org  
www.thetaskforce.org

A national progressive organization working for the civil rights of gay, lesbian, bisexual and transgender people, with the vision and commitment to building a powerful political movement.

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**Out & Equal Workplace Advocates**

415/694-6501  
info@outandequal.org  
www.outandequal.org

National nonprofit devoted to GLBT community in workplace settings. Hosts an annual workplace summit. Its Building Bridges Diversity Training Program is designed to help employers break down the barriers between GLBT and straight employees by opening up communication and creating a healthier workplace.

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**Pride At Work**

202/637-5014  
jbishop@aflcio.org  
www.prideatwork.org

A constituency group of the AFL-CIO, its purpose is to mobilize support between the organized labor movement and the GLBT community.

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**Renaissance Transgender Association Inc.**

Angela Gardner, Executive Director  
610/975-9119  
info@ren.org  
www.ren.org

Provides comprehensive education and support to transgender individuals and those close to them. Publishes a monthly magazine, Transgender Community News. Presents The International Congress on Cross-dressing, Sex and Gender.

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**Transgender American Veterans Association**

Monica Helms, President  
president@tavausa.org  
www.tavausa.org

Helps educate the Veterans Administration and the U.S. military on issues regarding fair and equal treatment of transgender and transsexual individuals. TAVA also advocates a change in public law and policy that will help initiate this fair and equal treatment.

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**Transgender At Work**

Mary Ann Horton  
mah@mhorton.net  
www.tgender.net/taw

Provides resources for employers interested in implementing workplace policies to help their transgender employees be most productive without spending energy hiding an important part of themselves.

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**Transgender Law and Policy Institute**

info@transgenderlaw.org  
www.transgenderlaw.org

Brings experts and advocates together to work on law and policy initiatives designed to advance transgender equality.

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**Transgender Law Center**

info@transgenderlawcenter.org  
www.transgenderlawcenter.org

Connects transgender people and their families to technically sound and culturally competent legal services, increases acceptance and enforcement of laws and policies that support California's transgender communities, and works to change laws and systems that fail to incorporate the needs and experiences of transgender people

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**TransHealth and Education Development Program**

Jodi Sperber, MPH  
TransHealth and Education Development Program /  
GLBT Health Access Project  
617/988-2605 x201  
jsperber@jri.org  
www.jri.org

A project of the Justice Resource Institute, TransHealth and Education Development Program educates healthcare and service providers to reach and care for transgender clients and patients, to reduce the risk of HIV/AIDS and to promote positive healthcare.

TransHealth staff also consult with federal, state and city agencies such as the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Substance Abuse and Mental Health Service Administration, Health Resources and Services Administration, Massachusetts Department of Public Health and the Boston Public Health Commission.

**TransYouth Family Allies (TYFA)**

info@imatyfa.org  
www.imatyfa.org

TYFA empowers children and families by partnering with educators, service providers and communities, to develop supportive environments in which gender may be expressed and respected.



## APPENDIX C: SELECT EMPLOYMENT DISCRIMINATION CASES

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*Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005).

Court upheld a federal jury award of more than \$300,000 to a transsexual police officer of more than 22 years who was denied a promotion to sergeant due to her transition.

*Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

Court held that harassment directed at a person because that person does not conform to traditional sex stereotypes is covered by Title VII. In this case, the plaintiff, a female senior manager in an accounting firm, sued the company when she was denied partnership in the firm because she was considered “macho.”

*Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000).

Court reinstated an Equal Credit Opportunity Act sex discrimination claim on behalf of biologically male plaintiff who alleged that he was denied an opportunity to apply for a loan because he was not dressed in “masculine attire.”

*Smith v. City of Salem, Ohio* 378 F.3d 566, 573 (6th Cir. 2004).

Court ruled that a male-to-female transsexual had a cognizable claim of unlawful sex stereotyping under Title VII. The plaintiff, a lieutenant in the Salem Fire Department, had worked for seven years without any negative incidents when she was disciplined while in the early stages of gender transition.



**NCLR: Federal Cases Recognizing that Discrimination on the Basis of Gender Non-Conformity and/or Transgender Status is a Form of Discrimination on the Basis of Sex**

[http://www.nclrights.org/site/DocServer/fed\\_gender\\_nonconformity.pdf?docID=1202](http://www.nclrights.org/site/DocServer/fed_gender_nonconformity.pdf?docID=1202)

## ENDNOTES

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[http://www.shrm.org/hrresources/surveys\\_published/2007%20Benefits%20Survey%20Report.pdf](http://www.shrm.org/hrresources/surveys_published/2007%20Benefits%20Survey%20Report.pdf).

## METHODOLOGY

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The first edition of this guide was based on conversations with 20 representatives of corporations that had already amended or were in the process of amending policies to address transgender issues in the workplace, as well as employer and legislative data the HRC Workplace Project had collected since 1998.

The HRC Foundation also elicited feedback and advice from a number of transgender consultants and conducted interviews with other transgender people about their workplace experiences.

The second edition of this guide expands on the first with several more years' experience with hundreds of employers that have added gender identity to non-discrimination policies, and many that have expanded or otherwise adjusted insurance offerings to provide transgender health benefits coverage.

We encourage readers to tell us about their experiences so that we may continue to refine this tool. Contact HRC Workplace Project staff at [workplace@hrc.org](mailto:workplace@hrc.org) with any questions or comments about these materials.

## ACKNOWLEDGEMENTS

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### ABOUT THE AUTHOR

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Samir Luther, manager for the HRC Workplace Project, works with employers to implement inclusive non-discrimination and benefits policies and other practices for gay, lesbian, bisexual and transgender employees. He leads the project's research efforts and authors the Human Rights Campaign Foundation's annual *Corporate Equality Index* and *The State of the Workplace for Gay, Lesbian, Bisexual and Transgender Americans* reports, as well as several papers, including "Domestic Partner Benefits: Employer Trends and Benefits Equivalency for the GLBT Family" and "Workplace Gender Transition Guidelines for Transgender Employees, Managers and Human Resource Professionals."

Luther has briefed human resources professionals, benefits administrators and congressional staff on the best practices and industry trends for inclusive workplaces. He holds a bachelor's degree in business administration from Washington University in St. Louis, and he joined the Workplace Project of the HRC Foundation in 2004 as research coordinator.

### SPECIAL THANKS

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Many thanks to Catherine Sheehy, former research coordinator of the HRC Workplace Project (then HRC WorkNet), who created the first edition of this guide in its entirety and without whom this edition would not be possible. Special thanks to Brian K. Moulton, Diego Sanchez and Meghan Stabler for their expert editorial review; to Brian K. Moulton and Christopher Edelson for their content for the "Non-Discrimination Laws" section of this publication; to Jamison Green and André Wilson for their expertise and ongoing work in securing access to insurance for transgender people; to Ché Tabisola for his content for the "Public Opinion" section of this publication; to Candace Gingrich and Aaron Teskey for their feedback on earlier drafts; to Sheila Grant, John Marzabadi and Aaron Teskey for their research contributions; and to the rest of the HRC Workplace Project team — Daryl Herrschaft, Eric Bloem, Deena Fidas and Alison Delpercio — for their critical feedback and input throughout the process.

For the first edition of this publication (published in 2004):

Special thanks to Jason, James MacGregor Halleman, Diego Sanchez, Amanda Simpson, Moonhawk River Stone, Andrea Dawn Verville, and Robyn Walters for sharing their workplace experiences; to Chris Daly, Jamison Green, Shannon Minter, Donna Rose and Liz Seaton for providing valuable feedback on earlier drafts; to the corporate human resource managers and other executives who shared their experiences in addressing transgender issues in their workplaces; and to Emily Jones, J. Smith and Louise Young who helped launch the development of this tool.

### ABOUT THE HRC WORKPLACE PROJECT

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The Human Rights Campaign Foundation's Workplace Project is a national source of information and guidance on gay, lesbian, bisexual and transgender issues in the workplace. The project produces timely and accurate research on issues confronting employers on GLBT diversity initiatives. It provides decision makers with cutting-edge research, expert counsel, online resources, best practices information and on-site training and education. Project staff act as consultants for diversity professionals seeking to position their companies as employers of choice and as trusted allies to hundreds of executives in corporate America. The project also makes available the expertise of the HRC Business Council for trusted peer-to-peer advice.



## ABOUT THE HRC BUSINESS COUNCIL

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The Human Rights Campaign Business Council was founded in 1997. Members provide expert advice and counsel to the HRC Workplace Project on gay, lesbian, bisexual and transgender workplace issues based on their business experience and knowledge.

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