

State of Delaware Guidelines on Equal Employment Opportunity and Affirmative Action Gender Identity Guidelines

Scope and Purpose

Per Governor's Executive Order #8, the State of Delaware must continue vigorously to promote equal employment opportunity and workplaces free of unlawful or improper discrimination.

Delaware law, Executive Order, and Merit Rules prohibit discrimination in state employment based on gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, veteran or military status, genetic information, and gender identity.

It is the position of the State of Delaware not to engage in discrimination against or harassment of any person employed or seeking employment with the State of Delaware on the basis of gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, veteran or military status, gender identity, or genetic information. Executive Order 8 directs that the work atmosphere in Executive Branch Agencies shall be one that fosters mutual respect and understanding among persons of different gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, veteran or military status, gender identity, or genetic information.

This document is intended to delineate guidelines for addressing the needs and issues that arise in the workplace when an employee transitions his or her gender identity, and is intended to be used for employees who may be or are transgender, their colleagues, and managers. These guidelines provide a starting point for building awareness about gender identity and the transition process, and apply to all employment practices including, but not limited to, recruitment, selection, promotion, transfer, salary, training and development, demotion, and separation. These Guidelines are intended to be consistent with the provisions of applicable State and Federal laws.

Gender Identity

Per Senate Bill 97, the State of Delaware's non-discrimination laws have been revised, effective June 19, 2013, to clarify that discrimination on the basis of gender identity is prohibited in accordance with this legislation as stated, in part, immediately below.

Non-Discrimination

It is the practice of the State of Delaware to treat all of its employees with dignity and respect.

Senate Bill 97, known as the Gender Identity Nondiscrimination Act of 2013, provides that it shall be an unlawful employment practice for an employer to fail or refuse to hire or discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin; or limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee because of such individual's race, color, religion, national origin, age, marital status, disability, sexual orientation, veteran status, genetic information, or gender identity.

The purpose of these Gender Transition Guidelines is to help foster dialogue and understanding of gender identity issues in the workplace. They include recommendations for employees, managers, and Human Resources on how to provide a positive atmosphere and supportive environment for employees whose gender identity does not match their assigned sex at birth and those undergoing gender transition while employed by the State's Executive Branch.

Definitions

"Gender identity" – gender identity means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.

"Gender expression" – gender expression refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely and some characteristics may be acceptable as masculine, feminine, or neutral in one culture may not be assessed similarly in another.

"Transitioning" - transitioning refers to the process through which a person modifies his or her physical characteristics and/or manner of gender expression to be consistent with his or her gender identity. This transition may, but does not necessarily include, hormone therapy, sex-reassignment surgery and/or other components, and is generally conducted under medical supervision based on a set of standards developed by medical professionals.

Notification of Transition

If you are a transgender employee, you have the right to be who you are openly. This includes expressing your gender identity without fear of consequences.

There are rights, expectations, and responsibilities of each party associated with a transition in the workplace. It is essential that open and honest communication be established to build trust for each party. An employee beginning the transition process should contact Human Resources and/or his or her immediate supervisor, and be prepared to speak about his or her intentions, needs, and concerns. Contact should be made by the employee sufficiently in advance of the employee's planned transition date.

Internal and external resources to assist transitioning employees are available.

Appearance Standards

The State of Delaware has the right to regulate employee appearance and behavior in the workplace for business purposes. Employers are permitted to require employees to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of State or Federal law, so long as the requirements are consistent with the employee's gender identity.

Within these standards, an employee shall be allowed to appear, groom, and dress consistent with the employee's gender identity. The decision as to when and how to begin presenting in accordance with one's gender identity remains the employee's choice. Typically, once an employee has informed the appropriate management personnel that he or she is transitioning, the employee will begin adhering to the reasonable workplace appearance, grooming, and dress standards consistent with the gender to which the person is transitioning. Agency dress codes should be applied to employees transitioning to a different gender in the same way that they are applied to other employees of that gender. Dress codes should not be used to prevent a transgender employee from living in the role consistent with his or her gender identity.

Restroom Access

Restrooms, locker rooms, and other gender-specific facilities access issues should be handled with sensitivity. An employer should consider an employee's gender identity regarding access to such facilities. The State of Delaware will provide employees with the same access to gender-specific facilities based on their gender identity, but also will consider the responses of co-workers and the comfort of the employee. An employee whose gender identity does not match his or her assigned sex at birth, including a transitioning employee, will have access to the gender-specific facilities (including restrooms) that corresponds to his or her gender identity, beginning when the employee first begins presenting in accordance with such gender identity.

Whenever practical, a single stall or gender neutral restroom may be utilized, which all employees may utilize. However, a transgender employee will not be compelled to use only a specific restroom unless all other co-workers of the same gender identity are compelled to use only that same restroom.

Confidentiality and Privacy

Transgendered employees have the right to be who they are without unnecessary disclosure of medical information. In addition, current and prospective employees who encounter problems concerning identification documentation, such as payroll and insurance forms should feel comfortable raising those concerns directly to Human Resources.

An employee's transition should be treated with as much sensitivity and confidentiality as any other employee's significant life experiences. Moreover, medical information received about individual employees is protected under the HIPAA privacy regulations.

The gender identity status of an employee is considered confidential and should only be disclosed on a need-to-know basis, and with the consent of the employee. Transitioning employees are encouraged to participate in the necessary education of their coworkers at whatever level they are comfortable.

Employee Records

Transitioning employees, including employees who have not begun any physical transitioning, will often assume a new gender specific name.

Employee records and work-related documents should be retained under the individual's legal name as reflected on identification documents verified at the start of employment, until, and if, the individual makes a legal change.

In other non-legal documentation, employers should update or change the employee's name and gender to the new gender specific name in certain employee records including email, phone directory, company identification, card or access badge, name plate, etc. Changes to the employee's "sex" designation on employee records should be made only in consultation with the employee; as such changes may impact eligibility for benefits. Where records must match the employee's legal name such as payroll and insurance documents, the legal name is to be retained until formal notification of a name change has been received.

Names and Pronouns

Managers, supervisors, and coworkers should use the name and pronouns appropriate to an employee's gender identity. Further, managers, supervisors, and coworkers should take care to ensure the correct name and pronouns are used in employee records and in communications with others regarding the employee.

Education

Training is a very important part of the guidance that is available to assist Human Resources, managers, supervisors, and employees with the sensitivity and management of issues throughout the process. While information should be disclosed only in consultation with the employee and on a “need to know basis,” it is encouraged that transitioning employees participate in the necessary education of their co-workers at whatever level they are comfortable.

State of Delaware Resources for Employees and Managers

- Job-Related Planning for a Gender Transition
- Local Human Resources representatives
- Employee Assistance Program
- Training - At this time training and education is available through the State HMS program and the National Alliance for the Mentally Ill (NAMI).

External Resources for Employees and Managers

- Human Rights Campaign Foundation — www.hrc.org/workplace/transgender
- Transgender at Work — www.tgender.net/taw
- National Center for Transgender Equality — www.nctequality.org
- Out & Equal Workplace Advocates — www.outandequal.org
- World Professional Association for Transgender Health — www.wpath.org