



Employer's Guide

Trans-identified people in the workplace

by

Alberta Civil Liberties Research Centre

Prepared by Melissa Luhtanen, J.D., Human Rights Educator

© 2012

Employer's Guide

Trans-identified people in the workplace

Definitions

“Transgender”, “Transsexual” and “Trans-identified” are all words to describe a person who is born with the physical attributes of one gender, but who knows at a deep level that their physical body does not match their inner gender. This is a medically recognized state.

“Gender identity” is a person’s sense of being male or female. We all have a gender identity.

“Gender Dysphoria” or “Gender Identity Disorder” are medically recognized terms to describe the medical issue whereby there is incongruence between a trans-identified person’s experienced gender and assigned gender.

“Gender reassignment surgery” is a number of medically necessary procedures used to treat Gender Identity Disorder and Gender Dysphoria. It is also known as “sex reassignment surgery”.

“Transitioning” is the process whereby a person who presents as one gender begins to dress, come to work and live as his or her identified gender. This may also involve psychological therapy, surgery and other medical procedures.

Human Rights Law

The *Alberta Human Rights Act* protects trans-identified people from discrimination in employment under section 7 of the *Act*, which states:

7(1) *No employer shall*

- (a) *refuse to employ or refuse to continue to employ any person, or*
- (b) *discriminate against any person with regard to employment or any term or condition of employment,*

*because of the race, religious beliefs, colour, **gender**, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or of any other person. (**bolding added**)*

The ground of gender includes “being male, female or transgender”.¹ Therefore, “transgender” people are protected from discrimination and harassment in employment, and any terms or

¹ *Protected areas and grounds under the Alberta Human Rights Act*, Online: Alberta Human Rights Commission website: <http://www.albertahumanrights.ab.ca>. (Accessed November 27, 2012).

conditions of employment. Employers have a duty to accommodate a trans-identified person who needs time-off work for medical reasons, such as surgery or recovery from surgery. Employers also have a duty to accommodate a trans-identified person who returns to work, presenting in their “new” gender. This gender may look “new” to the employer and other employees, but is the transgender person’s inner identity.

Employees also have duties regarding accommodation, such as informing the employer of the need for an accommodation, providing a doctor’s note for medical issues, discussing potential accommodations that would work for both the employer and employee, and keeping the employer informed of accommodations that are not working. The employer has a duty to accommodate an employee to the point of “undue hardship”. However, it is important to remember that Courts and Tribunals have found that some hardship may be necessary in accommodating an employee. An example of a reasonable accommodation would be giving a person time off for surgery, allowing them to use the washroom that matches their gender identity, or ensuring that they can access their medical benefits. Sometimes these accommodations will involve increase costs to the employer (e.g., for time-off work) or a change within the workforce. The Alberta Human Rights Commission has more information on the duty to accommodate² on its website: www.albertahumanrights.ab.ca .

In The Workplace

Revealing gender identity to other employees

For a trans-identified person who is transitioning in the workplace, there may come a time where colleagues and staff must be informed of the transition. Involving the trans-identified employee in a discussion of how to do this respectfully and effectively is the best way to address this process. The employer must be cautious not to release medical information or private information to general staff or others who do not need to know this information. Many trans-identified people have successfully transitioned at work.

There is no obligation on a trans-identified person to reveal to the employer that they are considering transition. Once the employee begins to make plans, such as having surgeries that will involve absences from work, the employee must then inform the employer of a need for accommodation. Transitioning involves many emotional and physical stages. An employee who does not share private information with an employer immediately is not being deceitful or lying. They are protecting their privacy until the need arises to request accommodation from the employer or provide necessary information to human resources.

The gender of a trans-identified employee, who transitioned in the past, is private information that must not be shared within the workplace without the employee’s express permission.

² *Duty to Accommodate* Online: Alberta Human Rights Commission website: http://www.albertahumanrights.ab.ca/Bull_DutytoAccom_web.pdf (Accessed November 27, 2012).

Use of bathrooms

Part of the accommodation process will likely involve the trans-identified employee using the bathroom that corresponds with his or her identified gender. There have been some cases (see: *Ferris v Office and Technical Employees Union, Local 15* [1999] BCHRTD No 55. *Sheridan v Sanctuary Investments Ltd*, [1999] BCHRTD No 43, that have addressed the use of gendered washrooms. These cases have notably said that using the appropriate washroom is “significant” in the identity of a trans-identified person. Refusing to protect an employee’s rights regarding the use of a washroom that matches their gender identity has been found to be discriminatory.

Respecting Privacy

It is not only a legal responsibility, but also a respectful practice to protect employees’ rights to privacy. This will mean keeping the gender that is marked on an employee’s identity documents private if it does not match the person’s presenting identity (i.e., when the person’s documents says male, but she is now female and presenting as such in the workplace). Other documents may also reveal a person’s gender such as police record checks and child welfare checks.

Trans-identified people can try to change the gender on their identity documents, however there are some very real hurdles in this process. Some trans-identified people may never be able to get all of their identity documents amended. Protecting the privacy of a trans-identified employee by not revealing the gender shown on these documents promotes a positive work environment.

Who We Are

The Alberta Civil Liberties Research Centre (ACLRC) provides resources, research and education on human rights and civil liberties issues. We provide speakers on various human rights issues affecting Albertans, including employment issues such as preventing discrimination in the workplace and the accommodation process. The ACLRC publishes many research papers on legal rights and responsibilities. Recently we completed the publication: “LGBT Rights: Climbing the Judicial Steps to Equality” regarding laws that affect lesbian, gay, bisexual and trans-identified people in Alberta.

This guide does **not** provide legal advice, but gives an overview of the law and some important information for employers who have trans-identified employees. Employers and employees are encouraged to seek legal advice about their rights and responsibilities in specific cases.

For more information on this topic or to book a speaker from the ACLRC please contact us:

Alberta Civil Liberties Research Centre
2500 University Drive N.W., Murray Fraser Hall 2350, Calgary, AB T2N 1N4
p: 403.220.2505
e: aclrc@ucalgary.ca
w: aclrc.com