

Duff on Hospitality Law

Gender Expression in the Workplace: A Primer for Employers

on 4.7.14 | Posted in Employment Law

As you may know, discrimination based on gender identity is unlawful in several states and many cities. This includes both the [State of Washington](#) and the City of Seattle. The [Equal Employment Opportunity Commission \(EEOC\)](#) has also taken the position that gender identity is protected under Title VII's prohibition against discrimination based on sex.

While the antidiscrimination laws that protect transgendered individuals are not new, the subject of gender identity may be new to your managers. This post is intended to provide a very basic understanding of transgender issues to get employers off on the right foot for appropriately, sensitively, and lawfully handling gender expression issues in the workplace.

Defining Basic Terms

Broadly speaking, “gender expression” refers to the way people manifest masculinity or femininity. This can be through clothing, hair, makeup, overall appearance, speech, or other behavior or form of personal presentation. “Gender identity” refers to a person’s innate sense of being male or female. When someone is “transgender,” it essentially means their gender expression or identity is not consistent with societal expectations of someone with the same assigned sex at birth. “Sexual orientation” is a person’s physical and/or emotional attraction to the same or the opposite gender. Although sexual orientation and gender identity are often discussed together, they are not the same: a person’s gender identity has nothing to do with their sexual preference, just the same as it has nothing to do with their age, race, or ethnicity.

Unlike the broader, umbrella term transgender (sometimes shortened to “trans”), “transsexual” specifically means someone who strongly feels that they do not embody the sex they were assigned at birth and has changed, or is in the process of changing, their sex to correspond to their sense of gender identity. These individuals often pursue medical options, such as surgery or medication, in order to align their physical characteristics with the gender with which they identify. When a person undergoes a process of medically, legally, and socially changing gender, this is known as a “transition.” A transition may or may not involve a “gender reassignment” (also known as “gender confirmation”) surgery.

One thing many people do not realize is that not every transgendered person necessarily identifies as the opposite sex or has any desire to change his or her body. In fact, a transgendered person may not identify as any gender at all but actually prefer to avoid restrictive notions of male or female altogether.

Tips for Being an Ally to Your Transgendered Employee

- Use respectful language. It can be difficult to know the proper terminology to use when talking to or about a transgendered employee. A lot of terms are out there in the media, but not all of them are considered respectful. Avoid stigmatizing words like tranny, transvestite, hermaphrodite, and sex-change surgery.
- Learn and use the proper pronoun. You should always call a trans person by his or her preferred name and chosen pronoun. If you don't know their preference, it's okay to respectfully ask the employee which pronoun they prefer, or how you should refer to them. If you do screw up a name or pronoun, just apologize and move on; making a fuss about it will likely be perceived as awkward or offensive. Along the same lines, ensure that an employee who recently disclosed that they are transgender is provided an updated name tag, uniform, business cards, etc. and that they are entered into internal and external systems with their preferred name and gender.
- Do not ask them if they have had gender reassignment surgery. This is a very private subject and should be treated the same way you would treat any employee's medical issue. The same goes for hormone replacement therapy or any other medical treatment. Just because someone is transgendered, it doesn't mean they want to talk to their boss or coworkers about their body.
- Keep it confidential. Be aware that a trans person's name or gender on their driver's license or other state or federal documents may be incongruent with their appearance or preferred name and pronoun (for example, when a person named "Steven" on legal identification presents as female). If this occurs, do not confront or "out" the transgendered employee. It may be necessary to note the trans employee's legal name in formal employment documentation, but there is no requirement to use that same name in the workplace environment - think of how often people go by nicknames or middle names rather than their given first name. An employee's status as transgendered should only be shared with those with a clear need to know, unless the trans employee prefers otherwise.
- Give the employee safe and private spaces. A question that always comes up with regard to transgendered employees is which bathroom they should use. Simply put, the transgendered individual should be permitted to use the restroom of the gender with which they identify. This is true regardless of whether they have had gender reassignment surgery. If another employee objects, that person should be reminded that this valued employee has the same right to use the restroom as all other employees. As

for locker rooms, the trans employee should be provided a private area to change (either within the regular public locker room or in a separate area) or be given a separate changing schedule.

As an employer, you are responsible to ensure that both your managers and your other employees are treating transgendered employees respectfully. As with most things, the tone you set at the top will make a big difference in how the rest of your employees behave. (It's also something that judges and juries give a lot of weight to when considering whether a company is responsible for an alleged hostile work environment against a transgender employee). That said, teaching respect and sensitivity to your employees is not necessarily easy or simple. If you have a transitioning employee, you may want to schedule a transgender awareness and sensitivity training to educate employees about trans issues and teach them how to respectfully interact with their transgendered colleague.

If you are experiencing issues with gender expression in the workplace or have any questions on the subject, feel free to contact [Greg](#).

Tags: discrimination, EEOC