

Trans Inclusion: Key Concepts and Terms

Gender Identity:

- One's inner sense of one's own gender, as male, female or other.
- Everyone has a gender identity. It may or may not match the sex they were assigned at birth.
- Gender identity is different from sexual orientation (which is about who you are attracted to).

Gender Expression:

- External manifestations of gender, potentially including appearance (clothing, haircut, etc.), mannerisms, and behaviors.

Sex/Gender Stereotypes:

- Social and professional expectations about "appropriate" appearance, mannerisms and behavior based on gender. For example, the expectation that a female attorney should wear a skirt suit, or the expectation that a male attorney should not wear colored nail polish.

Transgender or Trans:

- A broad term that encompasses many people who identify and/or express their gender differently from cultural expectations or stereotypes.
- Many, but not all, transgender people live life with a gender different than the one they were assigned at birth.

Gender Transition:

- Refers to the process or time period in which a person's lived, expressed gender changes from one gender to another.
- Transition is different for everyone. An individual's transition may or may not include elements of:
 - **Social transition:** using a preferred first name and pronouns, changing clothing and appearance.
 - **Medical transition:** health care such as counseling, hormone therapy, or possibly different types of surgery.
 - **Legal transition:** legal name change order, updated ID documents and records.
- A person's transition process can happen in any order and at any pace, depending on needs and circumstances. At work, what matters most is respecting each individual's process.

Transgender Women and Transgender Men:

- The term "transgender woman" generally refers to a person who identifies as a woman and uses the pronouns "she" and "her," but was assigned male at birth and may have been raised as a boy.
- The term "transgender man" generally refers to a person who identifies as a man and uses the pronouns "he" and "him," but was assigned female at birth and may have been raised as a girl.

Genderqueer and Gender Non-Conforming People:

- Some people identify not as 100% male or female, but as genderqueer, non-binary or another term they prefer.
- The "gender binary" is the classification of sex and gender into two distinct, "opposite" and disconnected forms of masculine and feminine.
- Genderqueer people may prefer neutral pronouns like "they" and "them" or "ze" and "hir," may be happy with "he" and "him" or "she" and "her," or may prefer no use of pronouns at all (e.g. use of their name only).

Respectful Interactions with Transgender Law Students and Attorneys

Respect is the key to working with everyone, including transgender people and gender non-conforming people.

- Use a person's preferred name and pronoun in every circumstance.
- If you are unsure of the pronoun someone prefers, ask them nicely.
- Inquire about identity and gender transition only when relevant to your work (almost never).
- If others are not respecting a person's gender identity, do something!
 - Example: "Actually, Jane uses female pronouns – 'she' and 'her' – so we all need to use them when talking to and about her."

Non-Offensive Terms:

- Transgender People
- Transgender Woman
- Transgender Man
- Gender Transition
- Trans
- Whatever the person says they prefer

Offensive Questions and Comments:

- "Did you have the surgery?"
- "What surgeries have you had?"
- "What was your old name?"
- "Does this mean you are gay/straight?"
- "I would never be able to tell you're trans. You are doing a really good job."
- "You'd look better if you...."

Resources

- Transgender Law Center – www.transgenderlawcenter.org
- Lambda Legal – <http://www.lambdalegal.org/issues/transgender-rights>
- National Center for Transgender Equality – www.transequality.org

Or feel free to contact us!

- Melanie Rowen: Associate Director, Public Interest Programs, Career Development Office, Berkeley Law, mrowen@law.berkeley.edu, 510.664.4862
- Morgan Lynn-Alesker, Associate Director, Post-Graduate Fellowships & Diversity, Georgetown Law Office of Public Interest and Community Service, mjl47@law.georgetown.edu, 202.662.9878

Best Practices for Working with Transgender Students and Attorneys

For everyone, in any workplace:

- Be respectful about pronouns/names: If you learn someone is transgender, ask what pronouns they prefer, use them, and support others in using the correct pronouns.
- Make sure that your school, firm, or organization has non-discrimination policies that cover gender identity and expression.
- Enact policies on:
 - Access to facilities, dorms, bathrooms;
 - Confidentiality;
 - Usage of preferred names and gender markers on IDs, in organizational records, on class rosters, employee lists, email accounts, and on diplomas (when possible); and
 - Bathroom safety (single stalls should not be gendered and should be available).
- Update health insurance policies to cover trans-related care.
- Provide any additional reasonable accommodations for trans employees and students.
- Advocate for or provide competency training on gender identity and expression for all staff.
- Professionally respond to colleagues who are being transphobic.
- Educate coworkers about supporting transgender students and attorneys.
- Develop mentor network of transgender or trans-supportive students and attorneys.

For law schools:

- Educate employers about transgender students.
- Include gender identity and expression in employer non-discrimination requirements.
- Compile list of employers who have hired transgender interns or employees.
- Research whether employers have transition-related healthcare coverage.
- Talk with students on being out – when, how, why – and strategize around unintentional outing, how to dress for interviews and work, etc.
- Offer to call employers and test the waters.
- Discuss references and whether to contact them beforehand.
- Signal support – décor, affirmative acknowledgement, use trans examples in presentations.
- Know local support resources and share them.

For law firms and other employers:

- Let your law school career services contacts know you encourage transgender applicants.
- Consider creating firewall around background checks to allow for privacy of trans applicants or employees.
- Place trans associates on project teams with supportive senior attorneys.
- Look carefully at the role gender stereotyping plays in “fit/professionalism” assessments and “natural bonding activities.”
- Don’t tokenize transgender employees or expect them to train your staff on the issue – consult an expert for more information.

Six Reasons to Become a More Trans-Supportive Workplace

1. Everyone should have equal access to an education and a workplace that does not discriminate against them based on gender identity or expression.
2. Supporting trans employees and students adds to the rich diversity of your firm or school, enriches the learning environment, and can better reflect the diversity of the clients lawyers will represent.
3. A supportive environment assures that students and employees are not distracted by unmet needs or fear of being fired, outed, or treated badly. Employees and students can focus instead on getting work done and having positive interactions with coworkers.
4. An atmosphere of fairness where people are judged by product and merit is good for employee morale overall.
5. Your peers are doing it.
 - Of the Am Law 200: 167 have gender identity in nondiscrimination policy; 140 have trans inclusive healthcare; 137 have leave after surgery, hormone coverage, surgical coverage; 64 have additional trans related health coverage; 117 have diversity trainings focused on sexual orientation and/or gender identity. See HRC Corporate Equality Index.
 - Many law schools include gender identity and expression in their nondiscrimination policy and provide trans inclusive healthcare. See LSAC Law School LGBT Survey.
6. You may be required to do it by law.
 - Nineteen states, DC, and PR as well as over 200 local jurisdictions have enacted laws prohibiting discrimination based on gender identity and/or expression. See NCTE Map: State Non Discrimination Laws.
 - Even for jurisdictions where no explicit gender identity or expression provision is present, the EEOC and courts have held that Title VII and nondiscrimination provisions that cover “sex” protect transgender employees, in both sex stereotyping and “because of sex” direct discrimination claims. See *e.g. Macy v. Holder* (2012), *McCreery v. Don’s Valley Market* (2013), *Glenn v. Brumbey et. al* (2011).
 - Exclusions for transition-related health care are increasingly seen as discriminatory (as well as bad for business). See *e.g. Esquivel v. Oregon* (2013). Nine states and DC have banned transgender exclusion riders in health insurance being sold in private plans in their state. See NCTE Map: Health Insurance Rules.

Resources

- HRC Corporate Equality Index: www.hrc.org/campaigns/corporate-equality-index
- LSAC Law School LGBT Survey: www.lsac.org/jd/diversity-in-law-school/lgbt-overview/survey
- NCTE Map: State Non Discrimination Laws: www.transequality.org/issues/resources/map-state-nondiscrimination-laws; Map: Health Insurance Rules: www.transequality.org/issues/resources/map-state-health-insurance-rules
- Lambda Legal Trans Toolkit: <http://www.lambdalegal.org/publications/trans-toolkit>; Dru Levasseur article on needed legal reforms: http://lawreview.vermontlaw.edu/wp-content/uploads/2015/05/39-4-06_Levasseur.pdf
- Transgender Law Center’s Model Employer Policy: <http://transgenderlawcenter.org/issues/employment/modelpolicy>
- Kenji Yoshino and Christie Smith “Uncovering Talent, A New Model of Inclusion” (2013): www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclusion-uncovering-talent-paper.pdf