

Trans and Non-Binary Inclusion: Key Concepts and Terms

Gender Identity:

- One's inner sense of one's own gender, as male, female, another gender, a combination of genders, no gender, etc.
- Everyone has a gender identity. It may or may not match their sex assigned at birth.
- Gender identity is different from sexual orientation (which is about attraction).

Gender Expression:

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

Sex/Gender Stereotypes:

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

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 with a gender different than the one they were assigned at birth.
- 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.

Non-Binary, Genderqueer, and More:

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

Gender Non-Conforming:

- Relating to a person whose behavior or appearance does not conform to prevailing cultural and social expectations about what is appropriate to their gender.

Gender Transition:

- Refers to the process or time period in which a person's lived, expressed gender changes.
- Transition is different for everyone. An individual's transition **may or may not** include elements of:
 - **Social transition:** using a preferred name and pronouns, changing 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. What matters most is respecting each individual's process.

Respectful Interactions with Non-Binary and Transgender Law Students and Attorneys

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

- Use a person's correct name and pronouns in every circumstance.
- If you are unsure of the pronoun someone uses, ask them nicely.

- If you make a mistake, apologize, fix it if you can, and move on.
- Inquire about identity and gender transition only when relevant to work (almost never).
- If others are not respecting a person's gender identity, do something!
 - Example: "Actually, Jo uses "they/them/their" pronouns, so we all need to use them when talking to and about them."

Non-Offensive Terms:

- Transgender or Trans [Person/Lawyer/Student]
- Non-binary [Person/Lawyer/Student]
- Gender Transition
- 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...."
- "You look like/dress like a woman/man, why do you use they/them pronouns?"
- "Can't you just decide?"
- "I just can't get comfortable using plural pronouns for one person."

Resources

- Transgender Law Center – www.transgenderlawcenter.org
- Lambda Legal – <http://www.lambdalegal.org/issues/transgender-rights>
- National Center for Lesbian Rights - <http://www.nclrights.org/our-work/employment/>
- 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
- J. Remy Green, Partner, Cohen & Green: j.remy.green@gmail.com
- Courtney Dredde Carter, Associate Director of Diversity and Inclusion, Jenner & Block: ccarter@jenner.com, 202.639.6042

Best Practices for Working with Non-Binary and Transgender Students and Attorneys

For everyone, in any workplace:

- Be respectful about pronouns/names: If you learn someone is transgender and/or non-binary, ask what pronouns they use, use them, and support others in using them.
- 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).
- Be familiar with your health insurance policy's coverage for gender-related care and aware of access issues for trans and non-binary employees and students.
- Provide any other reasonable accommodations for non-binary and trans employees and students.
- Advocate for or provide competency training on gender identity and expression for all staff.
- Professionally respond to colleagues who are misgendering transgender or non-binary students and attorneys, or being transphobic or otherwise problematic.
- Educate coworkers about supporting transgender and non-binary students and attorneys.
- Develop mentor network of transgender, non-binary or supportive students and attorneys.

For law schools:

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

For law firms and other employers:

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

Six Reasons to Become a More Trans and Non-Binary 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 and non-binary 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.
 - 158 of 160 Am Law 200 firms who participated in HRC's 2018 Corporate Equality Index survey include gender identity in their nondiscrimination policy, as do 83% of Fortune 500 companies; 141 have trans-inclusive healthcare policies; all but two have organizational competency efforts 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. See LSAC Law School LGBT Survey.
 - Although there is a clear consensus and movement towards gender inclusion, there is still the opportunity for firms and schools to distinguish themselves as D&I leaders by implementing best practices on inclusion of non-binary attorneys and students.
6. You may be required to do it by law.
 - 19 states, DC, and PR as well as over 200 local jurisdictions prohibit discrimination based on gender identity and/or expression. See NCTE: Know Your Rights: Employment Discrimination.
 - Even for jurisdictions where no explicit gender identity or expression provision is present, federal courts across the country and the U.S. Equal Employment Opportunity Commission (EEOC) have concluded that discrimination because a person is transgender or gender non-conforming constitutes sex discrimination.
 - The Affordable Care Act prohibits most health insurers from discriminating based on gender identity and transgender status.

More 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
- Gender Spectrum: Understanding Gender: <https://www.genderspectrum.org/quick-links/understanding-gender/>
- NCTE: Know Your Rights: Employment Discrimination: <https://transequality.org/know-your-rights/employment-general>
- 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): <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-uncovering-talent-a-new-model-of-inclusion.pdf>
- Julia Serano's Trans, Gender, Sexuality, & Activism Glossary: <http://www.juliaserano.com/terminology.html>
- The Radical Copyeditor's Style Guide for Writing About Transgender People: <https://radicalcopyeditor.com/2017/08/31/transgender-style-guide/>