

How to Create a Transgender Friendly Work Place

As of January 1, 2008, it is against the law for all Oregon employers to discriminate against an employee based on sexual orientation, gender identity or gender expression. It is also against the law for an employer to allow other employees, managers, clients or vendors to discriminate.

Below is a guide to get you started on the road to creating a transgender friendly workplace and avoiding discrimination complaints. But keep in mind, this information is only meant as a guide and it is always a good idea to consult your employment attorney regarding specific situations.

So, what does transgender, sexual orientation, gender identity and gender expression mean and what is the difference between the terms?

Gender identity is a person's sense of self as being either male or female. It is what a person feels on the inside as opposed to the *sex* of a person, which is what the person's body looks like on the outside. A person's sexual orientation characterizes who the person is emotionally and physically attracted to. A person's sexual orientation has nothing to do with a person's gender identity.

Gender expression describes how a person communicates the person's gender identity to the world through behavior, clothes, haircut, etc. So, an employee who self-identifies as a female, but wears male clothing is protected from discrimination. This would also be true for a self-identified male employee who is perceived as effeminate or wears feminine attire.

An employer, however, is not prohibited from enforcing an otherwise valid dress code or policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual. **What in the world does this mean?** It means the employer makes its decision based on the facts of each case with consideration for any potential harm that may occur to the employee as a result of enforcing the dress code or policy.

“Transgender” is an umbrella term that encompasses many variations of gender. What is most important to know is that a transgendered person is one whose gender identity or gender expression is different from the person's sex. This person may or may not pursue sex-reassignment surgery.

What do I do if one of my employees says he or she is going to transition into the opposite sex?

You can start by asking the employee what the person needs from you, the employer, in order to make the workplace transition as smooth as possible. Always respect the person's privacy by not asking questions that do not involve work-related issues. It is important to allow the transgendered person, if the person is interested, to be involved in the planning and decision making with regard to advising and educating staff.

What kinds of workplace changes can I expect when an employee transitions? Most likely, the transgendered employee will change her or his name and want to be referred to by the new name. The person will also want others to use the pronoun that is appropriate to the person's expressed gender.

What about the bathroom issue?

An Oregon employer must allow a transgendered person to use whichever bathroom is consistent with the person's expressed gender. So, if one of your male employees comes to you one day and says he is

going to transition into a female (M to F), expect that at some point this employee will begin to use the female bathroom. The transgendered employee is the best judge of when it is time to switch bathrooms.

Remember, transgendered individuals want to use the bathroom for the same reason everyone else does, not to cause problems.

What if my other employees are uncomfortable with sharing a bathroom or a workplace with a transgendered employee?

Explain to your other employees that you comply with Oregon law regarding the rights and protections of transgendered individuals and you expect the same from them. You and the transgendered employee may want to think about scheduling an educational seminar to help the other employees better adjust to the situation. You should also ensure that you have clear discrimination and harassment policies in place that are uniformly and consistently enforced. Remember, it's up to you as the employer to set a tone for your employees and managers about your commitment to a respectful and professional workplace.

For more information on this and other employment law related topics, plan to attend a Technical Assistance for Employers seminar. Visit www.oregon.gov/BOLI/TA for seminar schedules and registration information.