

NCI Guidance for Managers on Transgender Identity Transition in the Workplace

Introduction

While dealing with transgender employees in the workplace is largely uncharted waters, statistics show that as many as 200,000 people have undergone a gender change during the last several decades in the United States (Conway, 2002). Transgender individuals are people who live or wish to begin living in the gender role associated with the other sex from the one in which they were born and raised. With the growing number of people choosing to openly change their gender, without changing their jobs and communities and starting over somewhere else, employers will increasingly be faced with dealing with managing transgender employees' transitions in the workplace. Despite this reality, there are few organizations with the training or knowledge to deal with this issue. Even fewer organizations have guidelines or policy in place offering guidance on how transgender transitions should be handled in the workplace. Although this situation produces some unique challenges, there are many parallels with issues around race and gender, with which organizations are well-acquainted. Knowledge of principles and techniques relevant to these areas can be applied to issues that arise when an employee transitions (Walworth, 2003, SHRM Whitepapers).

The following information and guidelines are set forth to provide managers at NCI assistance and guidance in facilitating a transgender employee's transition, should they encounter this situation. It is in the employee's as well as the organization's best interest to assist and facilitate a smooth transition. Allowing a transgender employee to transition without assistance is not prudent; it sets the stage for tension and hostility in the workplace which can result in lowered productivity, harassment and potential legal action. On the other hand, if an organization proactively works to help facilitate the transition by having guidelines in place, the process can proceed smoothly, with minimal interruption to productivity and quality of work life.

Guidelines for Managers

When an employee discloses his/her transgender status to a manager and informs him/her of the intent to undergo a gender change, managers should follow the guidelines set forth below to help ensure a smooth transition. Additionally, managers can call the Office of Workforce Development at (301) 435-8524 for further assistance.

Before a manager begins the process of facilitating a transgender employee's transition, it is important to confirm the authenticity of the information. Legal precedent and reasonableness standards support the position that management may request official documentation from the medical professional treating the employee prior to taking steps toward addressing workplace identity transition issues. Important to note is the Benjamin Standards, the medical and psychological standards established for treating transgenders, recommend that a person live for at least one year full-time in the new gender role prior to undergoing gender reassignment surgery. In light of this standard, the transgender employee will likely begin living and coming to work in the new gender identity long

before he/she undergoes surgery. Additionally, some transgender persons change their identity without ever undergoing a surgical change. However, regardless of whether or not the transitioning employee undergoes gender reassignment surgery, once the manager has received confirmation from a medical professional of the pending gender identity change, he/she should proceed with facilitating the transition at work.

Once the employee's transgender status has been confirmed and the process for workplace transition begins, consideration needs to be given to controlling the flow of information regarding this issue. Confidentiality should be a primary concern in the early stages of the transition planning. Confidentiality and respectful disclosure are very important in managing the transition process. Premature disclosures about an impending transition before strategies are in place to deal with it can lead to an unmanageable situation. The manner in which co-workers and clients are informed about the transgender employee's change and the timing of the disclosures are critical in making the transition progress smoothly.

Upon being placed on notice by an employee with regard to a pending transgender identity transition, a manager should:

- Request medical documentation (this can consist of a letter from a medical or mental health professional providing treatment and/or care who can attest to the employee's transgender status and intent to undergo the gender change.) If a manager is uncomfortable requesting that information from an employee, he/she can call the Office of Workforce Development which can serve as an intermediary and assist the manager with that issue.
- A second option is to accept a driver's license reflecting the new gender. Some motor vehicle administrations, including Maryland, will issue a transitional driver's license reflecting the new gender once the individual has furnished medical documentation confirming their transgender status.
- Identify the employee's needs and discuss timeframe. Enough time should be factored in to allow for thoughtful planning and implementing the necessary logistics as well as giving colleagues and customers time to adjust to the new reality.
- Establish a plan around restroom use for the transitioning employee. For guidance on this issue, contact the Office of Workforce Development.
- To the extent possible, allow and assure the employee that he/she will have input into planning the steps for his/her transition at work.
- Facilitate informing peers and customers.
 - Colleagues in the employee's immediate workgroup ideally should be informed in person. Additionally, the employee should be asked if they would like to inform their colleagues themselves or be present when the manager informs the group. Finally, if the employee is uncomfortable being present during the disclosure, he/she should be given the option of having the manager inform the work group in his/her absence.

- If possible, colleagues with whom the employee works closely should be informed well before he/she begins living and coming to work in the new gender role. The employee and the manager can discuss how far in advance to inform close colleagues. This can range from several weeks to several months before, depending on what the employee and manager mutually agree would be appropriate.
 - Other employees with whom the employee has minimal contact can be informed via a written memorandum closer to the time of the change (e.g. one to two weeks before may be sufficient).
 - Regardless of how employees are informed, in person or through a memo, it is important to acknowledge the transition for everyone and to provide a resource, should they need to process their concerns about the pending transition with their colleague.
 - It is important that all statements, whether verbal or written, clearly convey the message that the transgender employee will continue to perform his/her job competently and it is expected that employees will treat him/her with respect.
- Assess whether the workgroup may need a facilitator to help employees understand and process any issues they may have around their colleague's identity change. The Office of Workforce Development (OWD) can provide a counselor/facilitator to assist employees in understanding transgender issues as well as processing their feelings and addressing concerns around the pending transition.
 - Make arrangements to have documents and official records changed, including identification cards, e-mail addresses, etc. so that all records are consistent and reflect the employee's new identity on the first day he/she reports to work in the new gender role.

If you need any assistance in working with the transgender employee, managing the transition, informing and training your staff, handling restroom use, and/or any other problems, the Office of Workforce Development is available to assist with these issues (301) 435-8524.

Legal Citations and Subject Matter Experts' Input

Below is information relevant to transgender persons who are changing their gender identity. The citations and consultations below were used in establishing the guidelines set forth above.

1. Transgender status is not covered under the Americans with Disabilities Act, and therefore accommodations under the ADA do not apply.
2. However, the Supreme Court ruled in 1989 that discrimination based on non-conformity to traditional sex stereotypes is a violation of Title VII of the Civil Right Act.

3. The District of Columbia's nondiscrimination law based on personal appearance has been found to protect transgender persons. (The federal government is predominantly headquartered in D.C.)
4. The state of Maryland will grant a person a transitional driver's license reflecting the name change and the gender change valid for the transition period, with documentation from health care professionals attesting to the person's transgender status and intent to undergo surgery. The Maryland MVA has a committee in place that reviews these applications and grants the transitional driver's license upon the committee's approval.
5. The Department of Vital Records is the only agency that can grant a transgender full legal status as the opposite gender, and only once proof of sex change surgery is submitted. It is also possible to change official records with a Court Order, but typically the Courts also require proof of surgery. However, a legal name change does not require official change of gender information.
6. The Montgomery County Attorney's Office and the State's Attorney's Office report no laws regulating or restricting the use of restrooms in public or commercial buildings. The identification of "men's" and "women's" restrooms is social convention. As long as nothing illegal is happening in a restroom, there is no law governing who can use a given restroom. For example, there is no law prohibiting a man from walking into a women's restroom, using the toilet inside the stall and leaving. The sensibilities of a woman in the restroom may be offended, but it is not illegal.
7. The Montgomery County Office on Human Rights enforces civil rights in the County. Their position is that the transitioning person can use the restroom of the new gender once they have self-identified and started living in that role.
8. Janice Walworth from the Center for Gender Sanity, author of best practices and seminal literature around managing transgender transitions in the workplace recommends that people in this situation be treated as members of the new gender once they start living in that role.
9. Dylan Wade, a lawyer who has expertise in transgender law issues and works for the Transgender Law Center in San Francisco, states he knows of no laws regulating bathroom usage. He corroborates the information cited above from civil and human rights professionals and attorneys regarding bathroom designations being a result of social convention rather than law. He also states that the trend and the courts are moving more and more toward self-identification as the standard of how one is to be identified and treated.

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