

# Transforming the Workplace

*A TUC guide for trade union activists on supporting  
trans members*

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## Section one

# Introduction

Trans people want and expect to be treated with dignity, fairness and equality. Unions can have a major role in ensuring that all workplaces provide a safe, welcoming and supportive environment.

Trans people face massive discrimination in the workplace. In March 2016 a study by a recruitment company showed that 60% of trans workers have experienced some form of discrimination in the workplace and 53% have felt the need to hide their trans status from their colleagues. A 2011 Government survey showed similar levels of discrimination and added that “88% of respondents said that ignorance of transgender issues was the biggest challenge they faced in employment.”

It is not known how many trans people there are in the workplace. Many chose not to disclose their trans status, either before their transition, or if they start a new job after transitioning. Many trans people are not in work because of the discrimination they have experienced, or feel that they will experience.

This guide is not just about supporting individual trans members in the workplace when there are problems or issues. It is about changing workplaces to make sure they are supportive of both current and potential workers who identify as trans.

### Trans people

The word “trans” or “transgender” is widely used to include all people who believe that the gender that they were assigned at birth is wrong and who want to live in the gender with which they identify. While this transition may involve corrective surgery or

hormone therapy, many trans people chose to live permanently in their acquired gender without any medical or surgical procedures. People who feel that their gender identity is different from the one they were given at birth are sometimes described as having “gender dysphoria”, but because different people feel it in different ways, not everyone with gender dysphoria will decide to have a permanent or full-time change of gender, or medical treatment.

In addition there are people who do not identify with either gender or who choose to identify with one gender but dress as another, either temporarily or permanently. Some of these people may identify as “non-binary”.

The important thing to remember that the word “trans” covers a wide range of experiences and every trans person is different, so some trans people will describe themselves by another term such as “transgender” or “transsexual”. Other people may decide they do not fit into any category and could prefer to use another description such as “non-binary”. In addition there are people who are born as “intersex”. They are not trans but often experience discrimination. Although the language you use is important, the individual themselves is in the best position to decide how they want to identify, the pronouns (she/her/him/her) they wish to be used and what they want to be called.

By adopting positive policies to support trans people in the workplace you will make it a better place for all those who have issues with their gender identity, regardless of whether they identify as trans or not.

## Section two

# The law

Trans equality rights were previously covered under sex discrimination law and are now part of the Equality Act 2010.

In addition to the Equality Act, the Gender Recognition Act 2004 enables trans people to acquire full legal equality in their acquired gender. Anyone who obtains a Gender Recognition Certificate is entitled to have legal documents changed to reflect their acquired gender, including their birth certificate. However whether a person has a Gender Recognition Certificate is irrelevant in the workplace (except some rare exceptions over corporate insurance policies) and there is no reason for an employer to request one. A trans person is protected from discrimination regardless of whether they have a certificate.

It is unlawful for employers to treat unfavourably people who are 'proposing to undergo, undergoing or have undergone a process (or part of a process) of reassigning their sex'. Trans people can now gain legal recognition for their reassigned gender. They can now have their birth certificate changed, which means they no longer have to disclose their gender history when applying for jobs.

It is important to remember that some trans people will live permanently in their acquired gender without undergoing any medical or surgical procedures. The Equality Act reflects this.

The Equality Act also makes it illegal to discriminate in employment and training on

grounds of gender reassignment. Discrimination is defined in terms of the comparative treatment of a trans person and the treatment of an 'other person' for

whom no gender reassignment exists. The protection provided covers direct discrimination, indirect discrimination, victimisation and harassment in employment or training on grounds of gender reassignment.

It is also a criminal offence for anyone who acquires information about someone's trans status to pass that information to a third party without permission from the individual.

Because the employer has a responsibility to ensure that there is no discrimination, victimisation or harassment, they also have a legal duty to ensure that others under their control do not discriminate or harass. That includes employees.

The legal protection in the Equality Act covers anyone who 'intends to undergo, is undergoing or has undergone gender reassignment', including people preparing for medical treatment. It is important to remember that gender reassignment means 'a personal process' of moving away from one's sex at birth to the preferred gender. It is not to do with undergoing a surgical process, which many trans people choose not to undertake nor does it require a person to have received medical treatment, including hormone treatment.

An employer would be acting unlawfully if they deny a request for time off to attend medical appointments, therapy, or surgery associated with gender reassignment where they would otherwise have permitted time off, e.g. if the person were sick or injured. That means they cannot normally insist that medical or related appointments are scheduled outside of working hours if this is not realistic and out-of-hours appointments are not possible.

There are some exceptions where, in certain limited circumstances, it will not be unlawful to discriminate on grounds of gender reassignment, such as when:

- a person's sex is a genuine occupational qualification for that job
- the job involves the holder conducting intimate searches
- the job involves the holder working in a private home and reasonable objection can be shown.

In each case we would expect the union to ensure that, were the employer to try to use the exemption, they would ensure that the worker was redeployed to a suitable post. However, if the employer tries to remove someone because a service user objects to a trans person working in their home then that should be challenged. Bigotry is not a "reasonable objection", and this exception is intended for limited cases such as where a carer may have to stay overnight with a client and the client feels awkward having a member of the opposite sex straying. The 'exception' rule is complicated and union representatives should seek advice from their union office or legal department of their union.

Public sector employers have additional duties under the Equality Act's Public Sector Equality Duty which covers gender reassignment and states that organisations must have "due regard" to the need to

eliminate discrimination, harassment, victimisation and any other prohibited conduct.

## ■ GOOD PRACTICE

*(From Bournemouth Transport Transsexual and Transgender Recognition Policy)*

*Definitions: The words to describe trans issues are often used imprecisely. The use of the wrong terminology can cause distress and it is therefore important that the correct terms are used. It is difficult to give clear definitions that are universally agreed, but the definitions below are generally accepted or are medically based. The word trans is becoming the most common term used to cover both transsexual and transgender people and the term can usually be used without causing offence. Once the transition period is completed no reference should be used to the transition period or previous gender.*

## Section three

# Role of the employers

### Role of employers

If an employer does have a policy on dealing with trans issues, often it is limited to a statement on avoiding discrimination. Some may also have a specific policy that covers supporting individuals during transition. Both of these are very important, but are only a part of what employers should do.

Employers should not wait until they are faced with having to deal with an issue before they put policies in place. Workplace policies should ensure that the employer actively encourages trans people to apply for jobs, supports those that are considering transitioning and ensures that any trans workers are protected against discrimination and harassment.

That means that an employer should look at their recruitment and selection procedures to ensure that they are fair. This will include making a specific statement in advertising material and the application form. It will also include making sure that the application form does not request unnecessary information that may reveal a change of gender identity, ensuring that past medical history relating to gender transition is not used against an individual and training those on selection and interview panels.

One of the first steps is to ensure that all line managers are trained in dealing with any issues relating to gender identity that may arise and also making sure that they

feel confident of their abilities to do so. There are a range of training options available (see further information).

### GOOD PRACTICE

(From Islington Council)

*The Council aims to eliminate discrimination in its structures and employment practices as well as to encourage change in individual behaviour and attitudes, and ensure equality of opportunity and treatment for all staff.*

*Abuse, harassment or bullying (e.g. name calling, derogatory jokes, unacceptable or unwanted behaviour and intrusive questions) are serious disciplinary offences, and should be dealt with under the Council's Harassment Guidance.*

*Anti-trans propaganda, in the forms of written materials, graffiti, music or speeches will not be tolerated. The Council undertakes to remove any such propaganda whenever it appears on the premises.*

*Equality training should be offered as a means of understanding the diversity of trans people and the barriers they face.*

Trans people are vulnerable to abuse and harassment so it is important that they are included in any harassment policy or statement. Staff have to be made aware that any discriminatory behaviour is unacceptable including “banter” or jokes even if not directed at a trans person. All discriminatory behaviour is inappropriate, whether comes about from ignorance or is a hate incident that is fuelled by prejudice, and employers have an obligation to prevent all forms of discrimination, including prejudiced comments about trans people.

All staff have to know that they will be supported if they make any complaints about offensive language or behaviour from staff or clients.

Employers should not accept anyone refusing to deal with a trans person because of any particular cultural views or religious beliefs. A person’s religion or belief must of course be respected but it must not be used to discriminate against another person’s protected characteristic.

As some trans people do not identify as male or female then the employer should also consider whether they need to use titles such as Mr, Mrs, Miss and Ms in records or communications. After all in most circumstances they are irrelevant.

Dress codes should also be flexible and gender neutral where possible to accommodate trans employees. If there is any form of uniform, the employer should provide clothing appropriate to the gender identity of the employee at that time.

Toilet and changing facilities are also something that has to be considered. Trans people should be able to choose the toilet or changing rooms appropriate to the gender they identify with. There should always be the option of , changing and toilet facilities as unisex. It is important at this stage that colleagues are aware and

understanding of gender transition as it is simple issues such as these that can cause difficulties for trans people in the workplace. Asking a trans person to use an accessible toilet as a compromise is not appropriate.

## ■ PHILLIPA’S STORY

*I have been active within my union UNISON for many years and was asked to support Melanie, a trans worker who was transitioning in the workplace. I sit on both the TUC and UNISON LGBT committees. I agreed to deliver the presentation on ‘trans in the workplace’ at their forthcoming staff development day. Melanie was in the audience and I stayed to talk with her, the branch secretary and Human Resources.*

*I agreed to visit Melanie at her workplace regularly and to work with her employer and used UNISON’s own model policy to ensure they had an effective trans policy. To the credit of the workplace, all the staff had been very supportive.*

*Melanie’s transition was a huge boost to her confidence. It has given her a route to activism within the trade union movement and she has represented UNISON at ‘Trans Pride’ and has since spoken in debates at our national conference.*

*The plans and processes that were put in place were very helpful and remain UNISON policy to date.*

Many employers have regular monitoring of the workforce which includes questions around gender, disability race etc. Some employers include questions relating to trans identity. This is a sensitive issue as many trans people fear that the process could identify them or do not necessarily identify with any specific "box" that needs ticked. The employer must be able to justify collecting that data, ensure confidentiality and also explain why they are doing it.

## Supporting transition

Changing gender identity is obviously a huge emotional change for a person to go through and many trans people decide to leave work rather than face the difficulties that so many experience. This should not be necessary and, if an employer has proper policies in place and staff are properly trained, there is no reason why a person should have to give up their work because they are changing their gender identity.

There are particular stages that most trans people will choose to go through before achieving their acquired gender identity. The timings of the various stages vary significantly between individuals and each situation will be unique, but they will impact enormously on their life at work.

When a person lives in their preferred gender it is not about having surgery. Even if a trans person does decide to have surgery they will have lived in their acquired identity for some time and transition should be seen as a spectrum with different stages that will vary from person to person. Employers should therefore not just focus on surgery. Instead many of the issues that the employer needs to address will arise when a worker first feels that they can come to work with their acquired identity. This is the time when they need most support and the employer has a major role to play in

ensuring that the person has a positive reaction from colleagues.

As part of their treatment the individual begins to live in their acquired gender and may have records changed to reflect this (such as their driving licence and passport). This period is called the 'real life experience' and is for a minimum of one year. The individual may be receiving hormonal therapy and may have regular review of their progress with a psychiatrist or psychologist.

This may be followed by corrective surgery to complete the transition to the acquired identity, however many trans people will live permanently in their acquired gender without undergoing any medical or surgical procedures.

At every stage of this process employers should work with the employee to instil confidence and a sense of control over the situation. The employer should discuss the situation with the employee and ensure that they are in control of the way that the change is managed, and the timing. When and how a person discloses that they intend to transition is for them. They may want to tell people themselves or they may want management or their union representative to do it. Planning this in advance helps ensure a positive reaction from colleagues and managers as the person goes through the stages of transition.

It is common for trans people to take a short time off work at the point of transition at the time when they change their name, personal details and to return in their new name and gender role.

Most workers will want to stay in the same job during and after transition, but some workers, especially ones who deal with the public or clients, may want to change roles within the organisation when they transition. Employers should always seek to work with the individual employee to ensure

that suitable redeployment is agreed. However if the employee is seeking redeployment because of fear of harassment, the employer should first take active steps to prevent harassment and ensure support from colleagues and managers.

It is good practice for an employer with a dress code to allow flexibility during transition and to respect the individual's wishes over when they are comfortable to change into the form of dress appropriate to the acquired gender.

## ▣ GOOD PRACTICE

*(From the US Office of Personnel Management's "Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace".)*

***Dress and Appearance:*** *Agencies are encouraged to evaluate, and consider eliminating, gender-specific dress and appearance rules. Once an employee has informed management that he or she is transitioning, agency dress codes should be applied to employees transitioning to a different gender in the same way that they are applied to other employees of that gender. Dress codes should not be used to prevent a transgender employee from living full-time in the role consistent with his or her gender identity*

Some staff and colleagues will need general information about trans people and others specific information about the individual depending on their role and work relationship with the individual, however no one has a right to be told about a trans person's transition and a fine line needs to be observed between the privacy of the trans person and the obvious nature of such a transition at work. The trans person must be involved at all stages of decision-making and any agreed communications.

It is important that all personnel records, including security passes and directories refer to the member in their acquired gender identity. Employers should make sure this happens when the trans person wants it to happen.

Records referring to a person's previous identity should be destroyed unless there is a very good reason for keeping them. If some records do need to be retained, an agreement needs to be reached on who has access and that nothing is revealed without the trans person's permission. Any reference to the person's previous sex must be made only with the permission of the individual. This includes some information relating to pensions, which may need to refer to the previous gender identity as contributions may have been made under a previous identity. Some corporate insurance and benefits policies also require information be disclosed about the status of trans workers if there is no Gender Recognition Certificate.

Time off for transition treatment is essential, even if a person is not undertaking surgery they are still likely to receive other forms of treatment. The length and amount of time off will vary from individual to individual and most trans people will need to attend a gender identity clinic for some considerable time as a transition may involve various medical and cosmetic treatments over a number of months or years. At the very least employers should ensure that this will

be treated in the same way as sickness absence, although many employers allow it to be granted as special leave.

During transition some trans people experience side effects or health problems that can effect work performance. The employer should ensure that they discuss with the worker and the union what adjustments can be made. This may include reduced hours or duties if the employee requests it.

## **CHECKLIST – WHAT EMPLOYERS SHOULD DO**

- Include gender identity and gender reassignment in equal opportunities policy and practice. This should include fair recruitment and selection processes.
- Ensure that gender identity is included in any harassment policy
- Train staff and line managers in trans equality and provide information about the issues, including around harassment and abuse.
- Have clear procedures for employees transitioning.
- Provide workers undergoing gender reassignment with paid leave from work for specialist medical appointments and for surgery.
- When an individual acquires a different gender, change all records and have processes in place to ensure confidentiality of any retained records.

## Section four

# The role of the union representative

Workplace representatives can play an important role in supporting trans members before, during and after any transitioning, but you can also try to ensure that all workplaces offer a supportive environment for trans people. That will increase the likelihood that trans people will be recruited and also make it more likely that people in employment who want to transition will feel confident in staying in their job during the process. An environment that is welcoming is more likely to enjoy all the benefits that come from having a diverse workforce.

It is best to seek to negotiate policies on trans issues before any issues arise. That means looking at current equal opportunities and bullying and harassment policies to make sure that they cover trans issues, but you should also look at other policies and procedures to check that they do not discriminate against trans people or those that do not identify with any gender, this includes recruitment policies, record keeping and dress codes. Employers should be asked to review all those jointly with the union to make sure that they are trans friendly (see role of employers). Once policies are in place they should be notified to staff. Trans issues should also be included in induction training.

You should also ask employers to have a specific policy and procedures for supporting any person who chooses to transition, including access to medical leave.

Workplace representatives in the public sector should specifically ask the employer what they have done to meet their Public Sector Equality Duty which says they must have "due regard" to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct in respect of gender reassignment.

Unions also have to be at the forefront of combatting any discriminatory behaviour. It must be made clear that harassment and abuse will not be tolerated.

Unions can also ensure that workplace representatives are given training in trans issues. This can be as part of general equalities and diversity training. As a union representative you should also know where they can go to for advice, information or support on trans issues. There are details at the end of this guide on how you can find further information.

As a workplace representative you could also be asked to support a member who is transitioning. If you have any doubts please contact your union for support but remember that you do not need to be an expert on trans issues. The member already is. What they need is support in dealing with the employer and their work colleagues and you, as a union representative, are best placed to do it. You should offer to come to any meetings with the employer. You may also want to talk to the member about how

## ▣ DEBBIES STORY

*My name is Debbie and I am a secondary school teacher. I had been in the same school for 9 years when I came out as a trans woman. I told the school because I was going to start the process of transitioning - that is living in my acquired gender. The school got advice from an expert and I went to my union, NASUWT.*

*The union was really helpful and supportive, explaining the practical things they could do as well as the legal issues. My union was involved in all the meetings which followed including discussions on time off for medical appointments and when to tell parents and pupils. The process of telling colleagues, children and their parents was done at my pace and the response was overwhelmingly positive.*

*Following my transition, I continued to teach the same classes and there was no disruption to the life of the school. Having an open and constructive dialogue between my union and employer benefitted everyone including me and the school.*

*I know first-hand the ways trade union can support trans members in the workplace. Because of the support I received, I have become much more active in the union supporting members and speaking out for LGBT equality at work.*

they want to inform those people they work with of their change in gender identity. The individual must be involved and in full control of how and when any announcements are made at all stages.

If there is a local trans-support group you may also want to suggest to the member that someone from there be asked to talk to work colleagues or managers about the issues.

Most unions have either a group for trans members or a group for lesbian, gay, bisexual and trans members. Many trans members of unions find these to be an important way of getting support from other people with a shared experience. Your union will be able to give you details.

As a union representative you also can help to make sure union records are changed at the appropriate time to reflect the member's new name.

## CHECKLIST – WHAT UNION REPRESENTATIVES CAN DO

- Negotiate equalities policies aimed at ending discrimination against trans people in the workplace and review all current agreements and policies to make sure they do not discriminate.
- Negotiate a specific agreement on supporting any employee who is transitioning.
- Make it clear that anti-trans behaviour or comments are unacceptable in the workplace.
- Find out where you can get training or information about trans issues and supporting trans members.
- Give support to any trans members.

## Section five

# Further information

**Check with your union what resources they have on trans issues. Also find out whether there is a trans or LGBT section.**

*The TUC has published an LGBT equality at work guide which includes trans issues:*  
[https://www.tuc.org.uk/sites/default/files/tucfiles/lgbt\\_equality\\_at\\_work\\_2013\\_online.pdf](https://www.tuc.org.uk/sites/default/files/tucfiles/lgbt_equality_at_work_2013_online.pdf)

*The Gender Trust have a national helpline: 0845 231 0505. There are also regional support details on their website:*  
[www.gendertrust.org.uk](http://www.gendertrust.org.uk)

*The Gender Identity Research and Education Society (GIRES) provide information, guidance, advice and training:*  
[www.gires.org.uk](http://www.gires.org.uk)

*GIRES have also produced a useful policy guide for employers:*  
<http://www.gires.org.uk/assets/Workplace/Transition-in-workplace-policy-Nov-2015.pdf>

*The Government Equalities Office have produced guidance for employers on the recruitment and retention of transgender staff:*  
<https://www.gov.uk/government/publications/recruiting-and-retaining-transgender-staff-a-guide-for-employers>

*The Equality and Human Rights Commission has produced a statutory code of practice on the Equality Act which includes useful guidance on trans issues and the law:*  
<https://www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice>

## Find out more

For more information about equality issues, go to:

**[www.tuc.org.uk/equality-issues](http://www.tuc.org.uk/equality-issues)**

Follow the campaign on:

**Twitter@TUCEquality**

Follow the TUC on Facebook at:

**[www.facebook.com/tradesunioncongress](http://www.facebook.com/tradesunioncongress)**