

GENDER IDENTITY IN THE WORKPLACE

AN INTRODUCTORY GUIDE



PREFACE

Congress — Congress is the largest civil society organisation on the island of Ireland, representing and campaigning on behalf of some 797,399 working people. Women now make up 51% of the membership. There are currently 55 unions affiliated to Congress, north and south of the border.

Congress seeks to achieve a just society - one which recognises the rights of all workers and citizens to enjoy the prosperity and fulfillment which leads to a good quality of life. Quality of life embraces not just material well-being, but freedom of choice to engage in the arts, culture and all aspects of civic life. This vision applies in the context of Ireland, Europe and the wider world and challenges the existing economic order.

Congress strives to achieve economic development, social cohesion and justice by upholding the values of solidarity, fairness and equality.

Even a casual glance backwards at history will inform of the many gains and advances that have been won for all in society, by trade unions – safer working conditions, paid holidays, maternity leave, the minimum wage, paid overtime, to name but a few. The list is virtually endless and many of the most basic rights that people now take for granted have been hard won over many years. Of course the greatest danger is that we begin to do precisely that – take them for granted. The single most effective way to protect established rights and break new ground in pursuit

of greater equality for all in society is through the trade union movement. A single voice can be drowned out or dismissed. That becomes a little more difficult when over 797,399 people speak out as one.

TENI, Transgender Equality Network Ireland — seeks to improve conditions and advance the rights and equality of transgender people and their families.

Despite significant progress in the past years, Ireland remains a place where it is difficult for transgender people to lead safe, healthy and integrated lives. TENI is dedicated to ending transphobia, including stigma, discrimination and inequality.

Our vision is an Ireland where transgender people are understood, accepted and respected, and can participate fully in all aspects of Irish society.

TENI engages in activities that promote the equality and well-being of transgender people in Ireland. We work in four main areas: Support, Advocacy, Education and Capacity Building. You can find out more about our work in human rights and equality at www.teni.ie

INTRODUCTION

Congress and Transgender Equality Network Ireland (TENI) have produced this Introductory Guide to promote equality and to help foster understanding of gender identity and transgender experiences.

Everyone has the right to work with dignity, and we all benefit when there is respect and equal treatment — in trade unions, at the workplace and in society.

Transgender workers currently face high levels of prejudice and discrimination. They are often invisible in the workplace and their rights may not be supported. A recent EU study found that the main reason why transgender people do not live in their preferred gender is the workplace.¹ We hope the good practice guidelines in this resource assist trade unions and managers to support transgender workers, raise awareness about transgender rights, and campaign for and on behalf of transgender members.

¹ Frketic, V. & Baumgartinger, P.P. (2008). *Transpersonen am osterreichischen Arbeitsmarkt*. Discursiv, Austria.

TERMINOLOGY

Individuals describe their identities and experiences in many different ways. In order to be respectful it is important that trade unionists are aware of the terminology that is currently in use. Using the correct language is not just an issue of 'political correctness', but can be fundamental to a transgender person's identity. It is important to take the time to familiarise yourself with the concepts and terminology. However, the best way to make sure you are using the right language is to ask an individual how they would like to be referred to. Just as with other areas of equality, oppressive language should be unacceptable in any context.

Gender Identity

Gender identity is a person's deeply-felt identification as male, female, or some other gender. This may or may not correspond to the person's physical characteristics or the sex they were assigned at birth.

Gender identity is distinct from sexual orientation. Gender identity refers to who you are, while sexual orientation refers to who you are attracted to. Transgender people describe their sexual orientation in the same way as everyone else: straight, gay, lesbian, bisexual, etc.

Gender Expression

Gender expression is the external manifestation of a person's gender identity. This is expressed through behaviours and external characteristics that are generally perceived by society to be masculine, feminine or androgynous. Gender can be expressed through mannerisms, grooming, physical characteristics, social interactions and speech patterns.

Transgender or Trans People

Transgender people are individuals whose gender identity and/or gender expression differs from the sex they were assigned at birth. Transgender is an umbrella term that includes people of different gender identities and gender presentations such as intersex people, people who cross-dress without any permanent desire for change, transsexual and other gender variant people.

Many transgender people wish to live as a member of the gender with which they identify and this may involve changing names, hormone therapy or surgery. The process is referred to as 'transition' (see below).

The term 'trans' can generally be used as a shorthand.

Not all trans people wish to transition. Some people do not identify as either male or female; some identify as both.

Transsexual People

Transsexual people are individuals whose gender identity is 'opposite' to the sex assigned to them at birth. Transsexual people identify with, or have a strong desire to live and be accepted as, the gender different to that which they were originally assigned at birth. Transsexual people typically may seek to bring their body into accordance

with their gender identity and achieve this by transitioning which may involve undergoing medical treatment in the form of hormones and/or various surgical procedures.

Transition

Transition refers to the process through which a person modifies their physical characteristics and/or manner of gender expression to be consistent with their gender identity. Transition may include some or all of the following: telling one's family, friends and co-workers; changing one's name and/or sex on legal documents; hormone therapy and/or gender reassignment surgery.

Crossdressing and Transvestite People

A transvestite or crossdressing person is someone who at times wears clothing, jewellery and/or make-up

not traditionally or stereotypically associated with their assigned sex. There is generally no intention or desire to change their gender identity or assigned sex.

Intersex People

An intersex person is someone who was born with a condition where their reproductive or sexual anatomy doesn't fit the typical definitions of female or male.

There are many different intersex conditions, and the issues faced by intersex people can be similar to those faced by trans people. However, there can be significant differences between the experiences of trans people and intersex people (for example, an intersex person might undergo gender assignment surgery rather than reassignment). Many intersex people do not identify as transgender.

Transphobia

Transphobia is the fear, dislike or hatred of people who are trans, or are perceived to challenge gender 'norms' of male or female. Transphobia can result in individual and institutional discrimination, prejudice and violence.

You do not have to be trans to suffer transphobia. Common examples are making derogatory comments about a man being 'sissy' or a woman being 'butch': the underlying premise is that there is a 'normal' way for men and women to look and behave, and that diverging from that is abnormal.

SUPPORTING TRANS-FRIENDLY WORKPLACES

1 Transgender People and the Workplace

Research by the EU Fundamental Rights Agency shows that trans people face more negative attitudes than LGB (Lesbian, Gay and Bisexual) people.² Trans people who are open about their gender identity in the workplace are more likely to experience harassment from co-workers and are sometimes forced to change jobs. The National Lesbian and Gay Federation (NLGF)

found that the single most important issue for trans people in Ireland was being able to work in an environment where one can be fully open about one's gender identity without fear of discrimination.³

Discrimination usually stems from a lack of familiarity or understanding, and therefore the key to a trans-friendly workplace is awareness and education. You don't have to have trans people in the workplace to encourage awareness and acceptance of different gender identities. Gender stereotypes are prevalent within the employment sector:

2 Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States (2009). European Union Agency for Fundamental Rights. Available: http://fra.europa.eu/fraWebsite/attachments/FRA_hdgso_report-part2_en.pdf

3 Burning Issues: Listening to the Voices of the LGBT Community in Ireland, 2009.

talking about gender and recognising or challenging assumptions can lead to a healthier, more open workplace.

Good Practice Guidelines for All

Respect the Gender the Employee Presents In:

- If someone's gender expression is female, treat them as such (this includes use of gendered language and choice of toilets or changing rooms).
- If you aren't sure what pronoun (he/she) to use, listen to see how they refer to themselves. If their gender is still unclear, either use gender-neutral language (they/their) or else simply ask what pronoun you should use. (see Tips on Language, p.15).
- Some transpeople are 'out' – open about their gender identity or expression – and others are not. Respect the employee's choice.

Remember that there is no legal requirement for someone to reveal their trans identity at work.

Have a Unified Approach to Respect:

- As a workplace, support mutual respect by addressing derogatory remarks or trans jokes with zero tolerance.
- Ensure that organisational policies on equality, harassment or bullying explicitly include trans people. Consulting with trans organisations (such as TENI) in the development of trans-friendly policies can further understanding of the issues faced by trans people in the workplace.
- Trans employees should be able to expect to work in an environment where management has zero tolerance for discrimination and respects the employee's wishes regarding disclosure or 'coming out' at work if this takes place.

Know How to Handle Questions:

- Those learning about trans identities for the first time may have many questions. It can be helpful to read further or watch short informational films online in order to understand more about the area. (You can contact www.teni.ie for recommendations).
- A trans person is not a spokesperson for all trans people: even if they are open about being trans, don't expect them to always want to talk about the subject.
- Co-workers may be curious about a trans employee, and may wonder what they used to be called, what they used to look like or if they have had surgery. Personal history is just that – personal – and asking a trans person such questions is disrespectful and may cause hurt or offense. If someone wants to share

personal information with you, they will do so in their own time.

- If you have appropriate questions you want to ask, phrase them politely and choose a suitable time.

Confidentiality

- Everyone has the right to privacy. The trans status of an employee is sensitive personal information. Their personnel information (employment records, insurance company records, medical information) should be protected by a maximum degree of privacy and confidentiality.
- Revealing someone is trans ('outing' them) not only violates their right to privacy, it places them at risk of discrimination and harassment, and even physical or sexual assault. It should be disclosed only on a need-to-know basis, and only with the consent of the employee.

Consider Awareness Training

- Training and awareness raising is an important component of an inclusive workplace – training of staff, managers and co-workers is hugely beneficial in deepening an understanding of trans issues.
- Don't make the trans employee be the trainer: call in a human resources person with expertise or a trans organisation that delivers training.

2 Transitioning and the Workplace

When an employee transitions, it means a change for the workplace. Both the trans employee and their co-workers need to respond, accept and adapt to the change. Principles of effective change management apply to this process.

It is vital to provide a welcoming and supportive environment for employees who want to transition at work. Transitions are often highly individual and there is no singular way to transition on job.

Trade union representatives have an important role to play in negotiating best practice procedures with managers. We recommend the following:

Discuss and Plan Jointly

A joint plan should be developed between employee and manager, and should include:

- Clarification of the way the employee will be addressed (i.e. name and associated pronouns).
- Access to facilities – toilets and changing rooms.
- Agreeing a date to commence transition. The time of change is usually the point at which the person begins to live permanently in their preferred gender; the use of the gender-appropriate facilities is not contingent on medical procedures or hormone therapy.
- If relevant, arrangements for time off work for medical treatment or adjustment to the preferred gender. Medical elements of transitioning are a private matter between

doctor and patient. Transitioning employees should not be required to reveal – and employers should not be permitted to inquire about – the particular medical elements of transitioning.

- Change of relevant personnel files.
- If the employee wishes to consider redeployment to another team or section.
- Schedule of regular follow-up meetings throughout the transition.
- Any changes that might help facilitate the transition (e.g., gender neutral toilets).
- How and when co-workers will be informed. It is crucial to discuss and agree the specific steps of communicating.

This is also an opportunity for managers to ensure policies are trans-friendly, to assess any awareness training

requirements and to ensure that access to personnel records is limited to those who need it to fulfill their role. It is also useful to take stock of the facilities for staff (toilets and changing-rooms) and decide if any adjustments are appropriate.

It is unacceptable to force trans people to use separate facilities (for example a unisex wheelchair accessible toilet) and is likely discriminatory not to support use of the facilities that correspond with their gender.

If a transitioning employee specifically asks for other toilet/changing room accommodation for safety or privacy reasons, give the request serious consideration.

Ensure that all policies and procedures take gender identity and trans workers into account.

Communicating News to Other Workers or Service Users

In larger companies, only the co-workers in the team need to be told. It is good practice for employers to take responsibility for informing those who need to know, but the wishes of the trans individual should be given priority. Transitioning employees may participate in the education of their co-workers at whatever level they are comfortable.

A manager should give co-workers general information about trans people and then specific information on the employee. They should:

- Pitch the information at a level and style appropriate to the audience involved.
- Include sufficient information to convey the facts without being gratuitous. Gender identity is a complex area, and it is important

not to get bogged down in detail: a separate Awareness Raising session can be scheduled.

- Make clear any changes to the name of the employee, and what language to use. Emphasise the importance of using the correct name and pronoun in future. Clarify if there are any situations where a different name or pronoun is preferred (e.g. when dealing with a certain department).
- Allow time for co-workers to react and respond. Some specific issues raised by transitioning may include: fear of the unknown; fear that the transition may mean a loss of staff or customers; fear that the transition will require the employee to take a significant amount of time off; fear that the employee may no longer be able to perform the full duties of their job.

- Offer details of where further information can be sought.
- Offer a show of support for the trans individual from the company.
- Highlight the right of all people to work in dignity, free from discrimination. Such a meeting sets the tone for the workplace, and employers and managers should model best-practice behaviour.

Tips on Language

As co-workers adjust to a change in name and pronoun, they may make mistakes. Adjusting to a change in gender is not about perfection, but about respect.

If you are unsure of how a person would wish to be addressed it is acceptable to politely ask: “Excuse me, which pronoun do you prefer?” or “Excuse me, how do you prefer to be addressed?” If you accidentally use the wrong pronoun, just

apologise once and continue with the conversation. Make a concerted effort not to make the same mistake.

When referring to a trans person in their absence, you should use their preferred pronoun. It respects their identity and helps prevent confusion and embarrassment for everyone.

If you cannot find out a person’s preferred pronoun, an easy approach is to be gender neutral: use the plural pronouns ‘they’ and ‘their’ in the singular sense or the individual’s name.

3 Transgender people and Workplace Law

EU Legislation

In the European Union there is currently no express prohibition of discrimination on the ground of gender identity. The need for adequate legal protection against discrimination of trans people is widely acknowledged. The Directive on the principle of equal treatment of men and women in employment (2006/54/EC), which prohibits discrimination against people who intend to undergo, or have undergone gender reassignment, only offers protection to a limited number of trans people. EU anti-discrimination law prohibits discrimination on the basis of ‘sex’ in the workplace. The European Court of Justice has found that a trans person who has been discriminated against can be protected by the prohibition on sex discrimination, if they have had or

are having gender reassignment. Many trans people experience significant problems due to the fact that existing legislation is based on binary men/women gender categories.

Equality Legislation in the Republic of Ireland

Although still not legally recognised, trans people in the Republic of Ireland are protected under the 'gender' ground of the Employment Equality Acts 1998-2008. However, transgender people are not expressly named as a category. The Acts:

- promote equality.
- prohibit discrimination (with some exemptions) sexual harassment, harassment and victimisation across nine grounds.
- require appropriate measures for people with disabilities.

- allow positive action measures to ensure full equality in practice in relation to access, participation and training in employment across nine grounds.

Most employment issues are dealt with by the Acts, including dismissal, equal pay, working conditions, promotion, and access to employment. The Acts apply to full-time, part-time and temporary employees; public and private sector employment; vocational training bodies; employment agencies; trade unions, professional and trade bodies.

Some trans people may also seek protection under the 'disability' ground and the 'reasonable accommodation' provision whereby an employer is obliged to take appropriate measures to enable a person who has a disability to have access to employment; participate or advance in employment; or undertake

training, unless the measures would impose a disproportionate burden on the employer.

Legislation in Northern Ireland

In Northern Ireland, the Sex Discrimination (Gender Reassignment) Regulations 1999 amended the Sex Discrimination Act 1975 to make it unlawful to discriminate in employment and vocational training on the grounds that a person intends to undergo, is undergoing, or has undergone gender reassignment (transition). There is absolutely no requirement for a trans person to disclose their gender history as a condition of employment, and, if they do choose to do so, it is unlawful to use this as a reason for not offering them the job. Similarly, it is unlawful to dismiss someone for not disclosing their gender history, or for disclosing this at a later date.

In 2005, the Sex Discrimination Act was amended to expressly outlaw harassment on grounds of sex and on grounds of gender reassignment. Harassment does not have to be targeted at a particular victim who is known to be trans. It is enough that transphobic language, 'jokes' or actions create a hostile environment. Significantly, the viewpoint of the person experiencing the harassment must be taken into account, alongside other factors, in deciding if harassment has taken place.

The Gender Duty, which came into force in April 2007, also places a new duty on public employers to take positive steps to combat discrimination and harassment of transsexual people.

Legal Change of Name and Gender

If a person wishes to be known by a different name in Northern Ireland or the Republic of Ireland, they are entitled to change their name at any time.

They can change their forename and/or surname, add names or rearrange their existing names. There is no set legal procedure that they need to follow in order to change a name. They can simply start using the new name.

Some trans people permanently change their name. There are some circumstances, such as applying for a passport or changing details on a bank account, when written evidence of the change of name is likely to be required. This evidence could take the form of a statutory declaration or a deed poll with the easiest and cheapest method being a statutory declaration. A practicing solicitor, notary public, or other officer of a court authorised by law to administer

an oath, needs to witness the signing.

Changing the gender on a driving licence or passport does not change the person's legal gender as a person's legal gender is established by their birth certificate.

The UK Gender Recognition Act 2004, which covers Northern Ireland, created a process to enable transsexual people to get their birth certificates and legal gender changed. A transsexual person can now apply to the Government's Gender Recognition Panel for a Gender Recognition Certificate. If they are successful in their application, the law will recognise them as having all the rights and responsibilities appropriate to a person of their acquired gender.

No such legislation has yet been enacted in the Republic of Ireland but the development of gender recognition legislation was initiated in 2010 as a result of the Foy case.

The Law and Confidentiality

In Northern Ireland, the Gender Recognition Act (2004) defines any information relating to a transsexual person's gender recognition application as 'protected information'. It is a criminal offence (punishable by a £5000 fine) for anyone acquiring this protected information in an 'official capacity' to disclose it to a third party without the person's consent. There are only a few exceptions, for example, if the information is required by the police for the prevention or investigation of a crime.

4 The Role of Trade Unions

Trade union representatives seek to assist all members to receive equal and non-discriminatory treatment at work. Members should not have to come 'out' at work as trans to be able to access equality and rights. In spite of the advances in equality legislation, trans people still remain vulnerable to discrimination and harassment in many forms. Trade unions have a key role to play in raising awareness about trans workplace issues and training union members, staff and managers in the workplace.

Transgender equality is a relatively new issue for many trade unions. Very few people manage to understand everything about trans issues right away – most important is your willingness to make an effort to learn, be supportive, and combat discrimination.

Trade unions can be at the forefront in promoting a culture that:

- is inclusive and values gender diversity.
- will not tolerate transphobic discrimination and harassment.
- will protect the safety and dignity of all workers irrespective of their gender identity.
- encourages the active participation of trans people.

Trade union policies can:

- create a positive climate.
- increase the visibility of trans issues.

Trade union representatives can:

- provide support and encouragement.
- advocate for specific measures for trans workers so that their gender identity is recognized.

- ensure that their gender identity is reflected in personnel records and facilities in the workplace.
- negotiate time off if required for people who transition.
- provide key information regarding rights and employer obligations, paying particular focus on areas such as recruitment, advertising, records and confidentiality, redeployment and retirement, harassment, single-sex facilities, dress code, benefits at work, pensions, insurance, and medical treatment whilst at work.
- work with managers to ensure that the workplace is trans-friendly, and negotiate workplace equality policies that are inclusive of trans issues.
- work with their union's pension experts to ensure that trans employee's pensions are not adversely affected by 'coming out' at work.

- listen and act when there is a problem in the workplace relating to gender identity.
- encourage reporting of discrimination and ensure that people facing discrimination have effective access to redress.

Tackling Discrimination and Promoting Equality

No person should be discriminated against while at work because of their gender identity.

Gender identity discrimination occurs when a person is denied opportunities, equal access, or subjected to a hostile environment because they are, or are perceived to be, trans or gender non-conforming. This discrimination can occur on its own or in combination with discrimination based on other characteristics such as race, disability, and/or sexual orientation. It can be

overt or subtle, and includes systemic discrimination, such as when there is a non-inclusive rule or policy. It can be influential in the recruitment process and in access to promotion and career development.

Transphobic harassment is a prohibited form of discrimination that occurs when a person is subjected to hostile, offensive, or intimidating behaviour by an employer or co-worker because of their gender identity and/or expression. Examples of harrassing conduct include:

- repeated failure to address a person by their proper name and pronoun.
- homophobic and transphobic comments.
- invasive questions about medical history or genitalia.
- jokes, name-calling, behaviour or display of pictures that insult or offend.

What Trade Unions Can Do to Tackle Discrimination and Promote Equality

- Provide training and information on gender identity and trans issues to trade union representatives who have a role in advising and representing members.
- Work to raise awareness and train workplace staff about gender identity.
- Ensure information about gender identity and support pathways is freely available to all members.
- Ensure all records are kept up to date, old records sealed and highest levels of confidentiality maintained.
- Ensure all members are clearly informed that discrimination on the grounds of gender identity and gender expression will not be tolerated by the union at any level.

- Provide education to members and officers on the rights of trans people, and particularly in dealing with harassment and discrimination at work.
- Ensure gender identity is included in equal opportunities policy and practice. Negotiate equal opportunity policies and procedures which specifically refer to combating discrimination on the grounds of gender identity and/or gender expression.
- Ensure full trans-inclusion in all organisational policies that reflect diversity within membership and workforce.
- Organise activities to educate employers, human resource managers and employees on gender identity issues to fight stigmatisation of trans people in the workplace.

- Include the issue of discrimination on grounds of gender identity and/or gender expression on union education and training courses.
- Training on equality legislation requirements; access to employment - non-discrimination and equal opportunities for trans people; pensions; sick leave.
- Work with organisations to draw up clear procedures for members undergoing transition, advocating for paid leave for workers who need to take time off during transition.
- Negotiate procedures with employers for handling complaints of discrimination on grounds of gender identity and/or gender expression.

- Ensure all workers are treated as the gender in which they live and work, irrespective of their legal sex. Work for the removal of any barriers that create disadvantages for trans workers (this includes during the transition period, and importantly, through legal recognition of the preferred gender).

FURTHER INFORMATION

See also:

Equality at Work; A guide for Lesbian, Gay, Bisexual and Transgender People and Trade Unions, a Congress and GLEN Guide 2011, at www.ictu.ie/equality/lgbt.html

LGB Workplace Diversity Guide, GLEN. www.glen.ie/pdfs/WorkplaceLGBTDiversityGuide.pdf

Where to go for help and advice

It is in your best interest to join a union as research has shown that members within unionised workplaces receive better pay, conditions and benefits. As a result of union negotiations, members also receive above the minimum standards set by Irish labour law. For more information on joining a union see: www.unionconnect.ie

Further support and information is available to help you to assist trans members – ask your Union Equality Officer or contact the organisations listed below:

Irish Congress of Trade Unions

<http://www.ictu.ie/equality/lgbt.html>

TENI - Transgender Equality Network

Ireland www.teni.ie

Equality Authority www.equality.ie

Your Employment Equality Rights

Explained <http://www.equality.ie/index.asp?locID=106&docID=52>

Northern Ireland Human Rights

Commission www.nihrc.org

European Trade Union Confederation

www.etuc.org

UNISON LGBT 'Out'

www.unison.org.uk/out

Belfast Butterfly Club

Support network for trans people and their families

www.belfastbutterflyclub.co.uk

**Funded by the Equality Mainstreaming Unit which is jointly funded by
the European Social Fund 2007-2013 and by the Equality Authority**



Ireland's EU Structural Funds
Programmes 2007 - 2013

Co-funded by the Irish Government
and the European Union



THE EQUALITY AUTHORITY
AN tÚDARÁS COMHIONANNAIS

Investing in your future

AN ICTU AND TENI PUBLICATION 2011

www.ictu.ie/equality