



The Jaguar Land Rover judgement prompts employers to review policies on gender identity

By **Kate Potts** in Personnel Today - 13 October 2020

In the recent landmark judgment of *Taylor v Jaguar Land Rover Ltd*, an employment tribunal has determined that the protected characteristic 'gender reassignment' under the Equality Act 2010 includes protection for non-binary individuals.

This judgment moves away from this way of thinking, determining that protection can extend to those who identify as non-binary. We anticipate that this protection will extend to those who identify as agender or gender-queer.

What did the case involve?

Ms Taylor worked as an engineer at Jaguar Land Rover for almost 20 years. She previously presented as male but in 2017 began identifying as gender fluid/non-binary and from then on usually dressed in women's clothing.

She claimed she was subjected to insults and abusive jokes, and that she suffered difficulties in relation to use of facilities and managerial support.

Ms Taylor successfully argued in the employment tribunal that she had suffered harassment, direct discrimination and victimisation because of gender reassignment and sexual orientation. She was awarded £180,000 as compensation.

Actions for employers

1. Awareness and terminology

Clearly, this judgment requires employers to be aware of a range of gender identities. Individuals who do not identify as cisgender (the identity they were assigned at birth) may identify as non-binary, trans, transgender (man or woman), gender variant, agender, gender queer, and other terms.

It's important that employers endeavour to be sensitive to different gender identities and that they use terminology appropriately, guided by the preference of the individual concerned. Training may help spread this awareness, and Stonewall has produced a glossary of terms which provides more detail on some of these terms along with others.

2. Using the right pronouns

Employers should review their contracts and policies to consider whether the pronouns used are inclusive of all genders. Such documentation should ideally refer to non-gendered "employees", "staff" or some other gender-neutral term, such as 'they' or 'their'.

Employers may also want to think about creating safe opportunities for employees to state their preferred pronoun. For example, at the start of a group meeting, training session or other appropriate situation employees can be asked to state their preferred pronoun.

Another way to do this is to ask employees to state their pronouns on their email signatures, or in their identity badges, as many employers already do.

Creating these kinds of opportunities for employees to declare their preferred pronoun can be helpful because it:

- Reminds others about the pronoun that particular individual prefers
- Reminds others generally that we should be aware of the terms and pronouns we are using in our day-to-day lives
- Reduces speculation about an individual's gender identity; and
- Helps show respect and support for trans colleagues, and generally fosters a more inclusive workplace.

3. Gender-neutral facilities

Although the written reasons for the decision are yet to be published, we understand that some of the allegations in this case related to use of gender-specific facilities.

Employers should consider designating some or all toilet and changing cubicles as gender neutral, so that they are open to everyone.

While it may not be reasonably practicable for some smaller employers to change the set-up of their facilities, it is advisable to consider whether there is at least one toilet and changing facility which can be designated as gender neutral.

The topic of gender-neutral facilities can provoke some debate, and so the matter should be handled sensitively, considering whether employee consultation is appropriate.

4. Gender identity policies

While there is no obligation to have any specific policy in place relating to gender identity, doing so will make current and prospective staff feel part of a more inclusive workplace and it will allow employers to demonstrate what they are doing to prevent discrimination.

Additionally, in *Souza v Primark Stores* the employment tribunal criticised the major retailer for not having an adequate policy in place, so it's a good idea to either put an adequate policy in place or consider updating your existing policy.

The types of policies and guidelines that employers should consider putting in place include:

Gender equality guidelines containing information about key legal protection, pronouns, terminology, use of facilities etc; and
A transitioning at work policy including details of how absences for such procedures will be dealt with at work.

5. Training

Training for staff and managers will increase awareness on the topic and the chance that relevant policies are followed.

Training sessions may include raising awareness of the terminology and the sensitivities around talking about identity, highlighting behaviour which could be considered as offensive and transphobic, and equipping managers to support supporting members of their team who are transitioning.

Gender identity is a sensitive issue, and your workforce will likely have a wide range of opinions on the topic.

Before implementing any of the practical suggestions, employers should consider consulting with the workforce and/or setting up a special taskforce to ensure the most appropriate and inclusive measures are taken for their workforce.