



Transforming gender identity practice and policy at work

By **Kate Potts** - 26 September 2019

This article is part of our diversity series on 'Gender Identity in the Workplace'. To learn more about what guidance is available, [click here](#), or to read about what the courts have said, [click here](#).

Gender identity is an ever-increasingly important issue in relation to which awareness is growing. This article explores gender identity in the workplace and some of the ways employers can create an inclusive environment for those employees who identify as something outside the binary concept of gender.

Be aware of key legislation

Key legislation impacting gender identity in the workplace include:

1. **The Equality Act 2010 (EqA)** - provides protection from discrimination for those who are proposing to undergo, are undergoing, or have undergone gender reassignment* surgery;
2. **Data Protection Act 2018** - requires that information relating to gender history is processed in a lawful manner; and
3. **The Gender Recognition Act 2004** - allows individuals to change their legal gender and also makes it a criminal offence to disclose someone's gender history.

*Notably, the protection afforded under the EqA relates to "gender reassignment" and therefore does not extend to all non-binary staff. However, it is best practice to treat all non-binary staff as though it does apply to them.

Be conscious of terminology

Individuals who do not identify as cisgendered (the identity they were assigned at birth) may identify as non-binary, trans, transgender (man or woman), gender variant, transsexual (although this term is rarely used), and other terms. It's important that employers are aware of the various terminology and that they use it appropriately.

Stonewall have produced a [glossary of terms](#) which provides more detail on these terms along with others.

Pronouns are key

In order to ensure that employment documents, contracts and policies are inclusive of all genders, such documentation should ideally refer to the non-gendered "employee", "staff" or some other gender-neutral term, such as 'they' or 'their'.

Another way to support an inclusive environment is to create 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. 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.

Gender neutral facilities

It can be difficult and intimidating for non-binary employees to enter toilets without fear of intimidation or harassment, so it's important that all employees have access to a toilet that they feel aligns to their identity and that they feel safe to access. One way of achieving this is to designate some or all toilet cubicles as gender neutral – i.e. open to everyone. While it may not be reasonably practicable for some smaller employers to change the set-up and demarcation of their toilets, it is advisable to consider whether there is one toilet (perhaps a disabled access toilet) which can be designated and labelled as gender neutral (if it is not already).

It's worth being aware that the topic of gender neutral facilities can provoke some debate, and so the matter should be handled sensitively, considering whether employee consultation is appropriate. For further commentary on the public bathrooms and gender identity, [see this article](#) by Simona Castricum for the Guardian.

Specific policies for gender issues at work

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. Employers should consider putting in place the following policies and guidelines:

- transgender equality policy containing information about key relevant legal protection;
- transgender equality guidelines for employees and managers containing information about pronouns, terminology, use of toilets and changing facilities etc.; and
- transitioning at work policy including details of how absences for such procedures will be dealt with and what support employees can expect.

See our review of caselaw [here](#) where a major retailer was criticised by the Employment Tribunal for not having an adequate policy in place.

Training the workforce

While having policies in place is a good step forward for employers, it is training for employees which increases the chances that those policies are understood and 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. These matters can be covered as part of general workplace behaviour [training](#) which many employers are already rolling out across the workforce.

Concluding thoughts

Employers would be well advised to consider how gender identity issues could impact the workplace, including by considering the issues and tips explored in this article. This article is necessarily a whistle-stop tour of the key action points employers may want to consider in creating a gender inclusive workplace. For further information on published guidance relating to gender equality, please refer to the '[5 handy guides to trans-inclusivity in the workplace](#)' article.