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**Gender Identity Research and Education Society**

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## **TRANSITION AT WORK GUIDELINES FOR EMPLOYERS**

One of the most important factors in the successful management of an employee's transition from one sex to another is to discuss with the individual how they would prefer to handle it. In some circumstances the transsexual person may wish to be the one to make a personal explanation to some or all of the colleagues they work regularly with. In this case the Human Resources Department and line manager (if they are already aware of the situation), will need to know when the disclosure is to take place and the depth of the disclosure, so they can agree and provide the appropriate support. Nothing should be done without the knowledge and consent of the individual. Both the individual and the manager will need to be provided with information about the actions proposed to ensure there is mutual understanding about what needs to take place. Once the transition process has been discussed and agreed a Memorandum of Understanding outlining the necessary actions to be taken should be drawn up, signed by both parties and, thereafter, adhered to, unless modified in writing by mutual consent. Issues, which may be considered, include:

- Whether the individual's wishes to stay in the current post during or after gender reassignment or if, possible, would prefer to be redeployed.
- Whether there are duties within the role that should not be undertaken at specific times within the process (for instance heavy physical work).
- The expected timescale of the medical and surgical procedures and the time off required for medical treatment, including what effect this will have on the employee's pay and promotion.
- The expected point or phase of change of name, personal details and social gender.
- Whether the individual wishes to inform management, colleagues and associates or would prefer this to be done by someone else who is agreed to be suitable.
- Whether training or briefing of colleagues will be necessary and at what point and by whom this will be carried out; advice in this regard should be taken from the Human Resources Department.
- What amendments will be required to records and systems?

- Whether a transsexual individual is adequately covered by existing policy on issues such as confidentiality, harassment and insurance and if not how these will be amended.
- Agreeing a procedure for adhering to any dress code or uniform requirements.
- Agreeing the point at which the individual will commence using single sex facilities in the new gender role, for example toilets and changing areas.
- Liaison with any clients or external agencies in respect of any outstanding matters in which the transsexual individual is currently involved.

Considered and well-documented negotiations should be able to identify and deal with potential areas of conflict before they arise. Nothing should be done without the consent/knowledge of the individual.

### Memorandum of Understanding

All agreements arising from the initial meetings should be drawn up into a written 'Memorandum of Understanding'. The transsexual member of staff and the line manager should sign this document.

Whilst the initial meetings and the drafting of the document can be undertaken by the staff member's line manager or support manager, a member of the Human Resources Department is encouraged to take an active role in the negotiations and to meet with the transsexual member of staff to discuss the detail of the Memorandum before it is signed.

The transsexual member of staff may wish to have the assistance/support of a colleague during this process.

The implementation of the Memorandum should be reviewed at least every three months, but should also be reassessed at each significant stage of the process.

**The Memorandum is a confidential document.** Discussion should take place to agree where copies should be kept and who should have access.

### The Role of Occupational Health/Welfare

The role of Occupational Health will be to advise the employer on fitness for work issues, fitness for role and provide appropriate advice on medical issues, which may impact on an individual's ability to carry out the full scope of the job. Advice on absence relating to treatment for transgender purposes should also be sought (in line with current policy for attendance management). Those having medical conditions such as gender dysphoria or gender identity disorder will be offered the opportunity to be referred to Occupational Health so that advice can be given.

Occupational Health cannot seek to replace the specialist medical advice, assessment and support required by individuals who are considering gender reassignment and would not presume to offer any opinion to individuals who are considering this. However OH are able to offer confidential support and

counselling for those who are suffering emotionally at what can be a distressing and confusing period of their lives.

Post surgery advice may also be needed regarding any temporary adjustments which may be required to assist an individual to return to work, who may not initially be able to undertake all aspects of their substantive role.

Any individual referred to Occupational Health can expect the issues to be dealt with in the strictest of confidence, as would be expected from any other practitioners providing care.

### Understanding the Likely Timescales for Treatment

It is good practice to discuss as far as possible in advance the time away from work that an individual will need to undergo gender reassignment treatment. Consultations and hospital appointments may require full days away from work in addition to any time required for surgical procedures. Flexibility should be allowed for individuals to undergo treatment. It is important to remember that it may constitute unlawful discrimination if an individual is treated less favourably when undergoing gender reassignment treatment than others who are absent from work for other medical reasons.

This is a general guide only and it is paramount to take individual needs into account on every occasion.

### Informing Colleagues

Following discussions between the manager and the individual, it should be established whether the transsexual individual wishes to inform colleagues about transsexualism and the proposed transition. Many transsexual people wish to keep their transsexual status private, whilst others are willing to discuss it confidentially or openly. There is no need or obligation for an individual to disclose his or her transgender status as a condition of employment nor is there any obligation on the employer to inform colleagues and the public that a member of staff is intending to undergo, is undergoing or has undergone gender reassignment. Such information is necessary only where the relationship with someone who knew the person prior to his or her change of status is to continue.

Unless the individual requests otherwise, the details should only be shared where the relationship with someone who knew the trans person prior to his/her change of status is to continue. It is usually good practice for the employer to take responsibility for informing those who need to know, though the known wishes of the individual concerned are of paramount importance in this regard.

In some circumstances the transsexual person may wish to disclose these matters personally to some or all of his or her contacts. If this is the case the employer will need to know when the disclosure is to take place and how much information will be disclosed in order to provide appropriate support to the members of staff involved.

Discussions should take place on two levels, general information about transsexualism and specific information to enable people to understand the situation of the particular person involved. At the point of change, it is common for transsexual people to take a short time off work and return in the new name and gender role. This can be used as an opportunity to brief others. In all cases, the legal obligations of management should be explained and the unacceptability of harassment made clear.

### Dress and Appearance Code

It is good practice to allow enough flexibility in the dress code to accommodate the process of transition from one gender role to another. For example, in the transition from male to female, flexibility should be allowed over hair length and style, jewellery and make up. If the individual is working with the public, a temporary redeployment out of the public gaze may be appropriate. The Gender Reassignment Regulations do not provide protection for transvestite members of staff, or those who occasionally cross-dress.

### Use of Single Sex Facilities

The Human Resources Department and the individual should agree the point at which the use of facilities such as changing rooms and toilets should change from one gender to another. In the case of *Croft v. Royal Mail Group PLC* 2003, the Court of Appeal held that an employee who was undergoing male to female gender reassignment had not been discriminated against on the ground of sex when her employer refused to let her use the female toilet and instead required her to use a gender-neutral disabled toilet as a temporary measure. In the Court of Appeal's view it was inherent in a situation involving the use of toilet facilities by employees undergoing gender reassignment that there be a period during which an employer is entitled to make separate arrangements for those undergoing the change. However, this does promote a negative view and good practice would be to identify facilities, which are rarely used as an option for an interim period.

An appropriate marker for changing the facilities used by the employee may, for example, be the point at which the individual begins to present permanently in the new gender role.

Once the gender reassignment including surgery has been completed it would certainly be sex discrimination to prevent an individual using the appropriate facilities according to the permanent gender role.

Transsexual employees are entitled to expect support from the employer, which should include discussions and explanations for other members of the workforce or members of the public about the practical implications of gender reassignment as and when necessary.

### Health and Safety

Employers should ensure that ongoing Risk Assessments are carried out for transsexual employees. This will ensure that the individual is kitted out with correct clothing, footwear, headgear and equipment.

## Dealing with the Media

Given the sensitivity of gender reassignment, there is always the possibility of intrusion from the media. There is a need for a prepared media strategy to be in place to respond to enquiries regarding a transsexual employee. In the interests of confidentiality the name and specific post of the individual should **not** be revealed. If the identity of the individual becomes known to the media, the individual's risk assessment should be reviewed immediately. It may be necessary to protect the individual with additional control measures such as redeployment away from contact with members of the public.

It may also be necessary to prepare a strategy to remove the individual from the home address if besieged by the media at home.

The wishes of the individual must be considered in any response given to the media.

## Personal Records and References

The respective forms used for security checks and medical screening will seek information that will lead to identification of transsexual status. This information will remain 'confidential' and the disclosure of this information will be restricted to those personnel involved in these two procedures, who will be required to honour that confidentiality. Any subsequent paperwork that indicates the individual's transsexual status will not be accessible to other personnel.

Where it is reasonable and practical, it is good practice for employers to update their records to ensure that any references reflect current name, title and gender. In some cases it may be necessary to retain records relating to an individual's identity at birth for example pension or insurance purposes. Access to any records showing the change of name and other details associated with the individual's transsexual status such as records of absence for medical treatment should be restricted to staff who require such information to perform their specific duties.

Transsexual people in employment may choose voluntarily to disclose at a secondary level, for example, answering an equal opportunities questionnaire, or asking for support from a line manager. Again, strict confidentiality should be observed.

**Breaches of confidentiality will be treated in the same serious manner as disclosure of personal details of any other employee.**

## Insurance Matters

Employers registering staff for corporate insurance and benefits policies are advised to inform their underwriters if they know of a trans employee's status, since some insurers automatically invalidate a policy if a major fact such a gender reassignment is not disclosed. The employer should inform the employee before disclosing the information. If an employer is unaware that an employee has a reassigned gender, the obligation to disclose falls upon the

employee, who could also be held liable in the event of an accident for which no valid insurance cover exists.

### Pensions and Retirement

Everyone born after April 1955 now receives state pension at 65. But women born before 1950 can claim state pension at 60, and those born between 1950 and 1955 can claim it at a point between 60 and 65. For state pension purposes, transsexual people can only be regarded as the sex recorded at birth until they have obtained a new birth certificate under the provisions of the Gender Recognition Act 2004. Otherwise, those born prior to April 1955 can only claim state pension at the age appropriate to the sex on the original birth certificate - that is for transsexual women at age 65 and for transsexual men at 60. It is the responsibility of the employer to take suitable steps to keep confidential the reason for the individual's apparently early or late retirement.

### Further Information, Advice and Training

The Gender Identity Research and Education Society (GIREs) will be very pleased to help any employer or employee undertaking a transition at work. This includes providing a training workshop for the staff involved in or affected by the transition process. Contact should be made with the charity via the addresses given above.

### Useful Links

UNISON guide on the rights of trans workers, "Bargaining for Transgender Workers' Rights".

<http://www.unison.org.uk/acrobat/B2566.pdf>

The Amicus guide, entitled "Combating Homophobia and Achieving Equality for LGBT Workers - A Negotiator's Guide", which includes substantial sections on trans issues

<http://www.amicustheunion.org/pdf/Negotiators%20Guide%20-%20LGBT.pdf>