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Title:
Expanding Cultural and Legal Competency Beyond the Basics: Serving Transgender Clients

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Recently expanded legal protections for transgender people face an uncertain future. Transgender people need culturally competent, informed and supported legal advocates. This session will focus on the cultural competencies necessary in serving transgender clients, the national landscape of organizations dedicated to working with and for the transgender community and the impact legal advocates have on the national conversation.
Winnie is a lesbian who lives in federally subsidized housing with her two children. Winnie’s girlfriend, Silvia, spends nearly every day at Winnie’s apartment. Silvia has told Winnie that she should add Silvia to her lease, but Winnie is afraid to ask. The last time she and Silvia were sitting on the porch holding hands, the office manager walked by and gave them a dirty look. Winnie has also found garbage left on her doorstep. Late one night, Silvia had too much to drink and got into an argument with Winnie. Silvia yelled at Winnie and slapped her, and Winnie screamed for help. The next day Winnie found on her door a lease termination notice from the housing authority, saying that her neighbor reported her for causing a loud disturbance at night. Winnie calls her local legal aid office for help; while she dials, she worries that the person who answers the phone will be hostile or homophobic.

Winnie, like all of our clients, wants to feel understood and well represented when she calls on legal aid. To help her meet her goals and accomplish our institutional mission, we have a responsibility to develop fluency with terms and issues relating to lesbian, gay, bisexual, and transgender (LGBT) people; to create an office environment that is welcoming and accessible for LGBT clients; and to develop inclusive legal, policy, and programmatic strategies. Programs across the country, from California to New York to Georgia, are taking steps to ensure that clients such as Winnie are welcomed and respected.

Why Cultural Competency

Countless low-income LGBT people rely on legal aid organizations to provide them with skilled representation so that they can maintain the basic necessities of life. Recent research shows that “one third of lesbian couples and 21.1% of gay male couples without a high school diploma are in poverty, compared to 18.8% of different-sex married couples.” Nearly one in four children who live with a male same-sex couple and 19.2 percent of children who live with a female same-sex couple are in poverty, compared to 12.1 percent of children who live with a married different-sex couple. More than 5 percent of people with annual incomes under $24,000 identify as LGBT, “a higher proportion than among those with higher incomes.”

Beyond the structural injustices that lead to the nation’s generally high rates of poverty, LGBT people across every demographic face hurdles that help explain their overrepresentation in low-income communities.

LGBT people across every demographic face hurdles that help explain their overrepresentation in low-income communities. Lack of family or community support may stop LGBT people from relying on the informal safety nets that keep many out of poverty. The refusal of most states to recognize same-sex marriages or other same-sex relationships means that many LGBT people lack the financial security that marriage can provide, including access to health insurance coverage. A lack of explicit bans on sexual-orientation or gender-identity discrimination can create barriers to stable employment and housing. And fears about discrimination and violence by police, courts, shelters, churches, and other authorities make escaping poverty even harder for LGBT people.

Representation of LGBT clients is a natural fit for legal aid organizations, which typically have mission statements devoted to helping the marginalized, fighting for justice, and preserving the dignity of clients. All of these goals are relevant to the needs of low-income LGBT people, who simply seek the same equity and dignity that all of our clients want. Whatever our own identities and beliefs, legal aid staff members have a professional responsibility to serve all clients and communities with knowledge and respect. Every legal aid program undoubtedly has already served LGBT clients even if its staff is unaware of having done so. Just as programs recognize the particular vulnerabilities of

1 See Lisa J. Cisneros & Catherine Sakimura, Recognizing and Responding to the Needs of Low-Income Lesbian, Gay, Bisexual, and Transgender Clients, 43 Clearinghouse Review 515, 518 (March–April 2010);
2 M.V. Lee Badgett et al., Williams Institute, New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community (June 2013);
3 Id.
4 Gary J. Gates & Frank Newport, Gallup, Special Report: 3.4 % of U.S. Adults Identify as LGBT (Oct. 16, 2012).
clients with limited English proficiency, clients of color, elder clients, clients with disabilities, domestic violence survivors, and so on, so too, should programs recognize that LGBT cultural competency is crucial to our work. Working to provide competent and respectful services to LGBT clients also helps advocates meet their professional responsibility obligations. Although not considered ethical mandates, the American Bar Association’s Standards for the Provision of Civil Legal Aid provide excellent guidelines and best practices for delivery of legal aid. ABA standard 2.4 on cultural competence states that "a provider should ensure that its staff has the skills, knowledge and resources necessary to provide assistance in a culturally competent manner." Standard 2.4 provides a framework for serving all clients in a cross-cultural practice. Moreover, it applies with equal force to providing legal aid to LGBT low-income communities.

Creating a culturally competent organization able to provide respectful services to LGBT clients cannot be accomplished in one step or one staff training.

According to standard 2.4, developing client trust and confidence is a fundamental responsibility of legal aid providers. Lack of cultural competency can be a barrier to establishing a relationship of trust and confidence with clients and can influence how the attorney-client relationship is formed. It can also affect client access to legal aid, the delivery of legal information and education to the targeted community, and the quality of the client’s representation before adversaries, administrative agencies, and the courts. Developing cultural competency in representing LGBT clients is therefore critical for legal aid programs. Cultural competency “involves more than an absence of bias or discrimination,” as the commentary on standard 2.4 explains. It involves improving the overall provision of legal services for diverse clients and developing respectful practices and responses to their legal problems.

All lawyers are required to provide competent legal services to clients. ABA Model Rule of Professional Conduct 1.1 states that “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” In legal aid practice, serving LGBT clients competently means, at a minimum, staying abreast of the many legal changes affecting the community, being skilled at developing attorney-client relationships, and thoroughly preparing for the representation of LGBT clients in an evolving social, political, and legal landscape. Unless we understand the legal protections available to LGBT people and create a space for LGBT clients to discuss their sexual orientations and gender identities with us, we may miss available claims for relief and thus be unable to provide them with competent representation.

Lawyers must also be diligent in their representation of clients. According to ABA Model Rule of Professional Conduct 1.3, “[a] lawyer must act with reasonable diligence and promptness in representing a client.” Facing opposition or backlash for representing an LGBT client can pose a challenge to a lawyer or legal aid organization. But the comment on rule 1.3 makes clear that “[a] lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor.” Despite any political unpopularity of LGBT clients, a lawyer must still act with zeal and dedication to their interests.

Given the political and cultural stigma around issues of sexual orientation and gender identity, some individuals and organizations may find that improving services to LGBT clients seems new, unfamiliar, or even uncomfortable. Meeting these challenges and evolving beyond them is part of building a culturally competent and ethical practice. Staff training creates safe spaces for workers to move beyond any initial hesitation or reluctance and to recognize that representation of LGBT clients is simply a component of effective professional service.

In dealing with our own questions, we may need to open ourselves to new understandings and approaches. And when confronted by bias, we may need to find the strength to stand firm on the side of equity. All of this takes courage, trust, collaboration, and commitment. But pushing toward greater justice is also deeply rewarding, keeping our organizations relevant in changing times and allowing us to fulfill our obligation to be zealous advocates on behalf of those we serve.

Key Elements for Culturally Competent Organizations

Six elements are essential to the development of a culturally competent organization.

5. See American Bar Association Standing Committee on Legal Aid and Indigent Defendants, Standards for the Provision of Civil Legal Aid, Standard 2.4 (Aug. 2006).

6. Id. at 56.


8. Id. R. 1.3.

9. Id. R. 1.3 cmt.

10. This discussion of the key elements of culturally competent organizations, as well as the following tips on outreach, intake, and case handling, is based in part on training materials created by the National Center for Lesbian Rights and California Rural Legal Assistance for use in training legal services offices on serving lesbian, gay, bisexual, and transgender clients. For more information about our legal services training project, please contact us (see authors’ contact information at the end of this article).
LEADERSHIP AND VISION. The importance of leadership and vision in the development of LGBT cultural competency cannot be overstated. Support from an organization’s board and executive director is critical to the success of this effort. One key aspect of leadership is situating LGBT-related work within the same frame as the rest of the organization’s mission, vision, and priorities. This forms a context for weaving LGBT considerations through various organizational structures, as well as integrating them with current programming, budgeting, and other priorities. Strong commitment from the organization’s leaders is also crucial to countering any push-back or concerns about this work that staff, funders, clients, or community members may raise.

ONGOING TRAINING, NEEDS ASSESSMENTS, AND EVALUATIONS. Creating a culturally competent organization able to provide respectful services to LGBT clients cannot be accomplished in one step or one staff training. To ensure that LGBT-inclusive work becomes institutionalized within your organization, the staff must have periodic staff training sessions that include substantive LGBT-related legal information and policy updates. Keep your finger on the pulse of the community through periodic needs assessments conducted with LGBT clients. Ultimately you will also want to check with staff and clients about how well you are meeting your cultural competency objectives. This should be done by surveying clients and your organizational staff through evaluations. The feedback you receive will become part of your ongoing organizational growth and improvement.

WELCOMING OFFICE CLIMATE. Your physical space, resource materials, and staff interactions all must convey a message of respect and inclusion. You must have a welcoming attitude not only while doing outreach to LGBT clients but also for your interactions with all clients, LGBT and non-LGBT alike. Non-LGBT clients may refer LGBT people for assistance or may have close friends or family members who are LGBT, and a client you think is not LGBT may later come out to you. A welcoming environment presents a message to the broader community—that your organization respects the dignity and diversity of the LGBT population.

RESPECTFUL INTAKE SYSTEMS. As a first point of connection for many clients, respectful intake processes are for building client trust, as well as enabling advocates to obtain critical information about the nature of a client’s situation and legal needs. For both these reasons, intake procedures need to be structured in a way that allows each client to share relevant information about the client’s sexual orientation and gender identity (as well as other aspects of the client’s life) in an inclusive and confidential manner.

OUTREACH TO LGBT CLIENTS
Organizations committed to LGBT cultural competency should consider ways to engage in active outreach to LGBT communities. Active outreach will help publicize your work with LGBT clients and is a way to share relevant resources. It will also send a welcoming message to LGBT people and their family members who may need your services. Because of past and ongoing experiences of discrimination or invisibility, many LGBT individuals who need access to legal aid may fear that they will not be welcome or safe within our agencies or in the justice system—and may therefore not seek out the help they need. Outreach is key to turning this dynamic around by broadening general awareness of legal aid among low-income LGBT populations.

Organizations can use these strategies to reach prospective LGBT clients:

1. SHOWCASE YOUR COMMITMENT.
Include a brief statement or section on your website and written outreach brochures,
You can make your office space welcoming by hanging posters or signs on LGBT issues in your waiting area or outside your office along with other materials and information. If you have materials in your waiting area, include some LGBT-specific ones. If you have lists of targeted populations on any flyers or brochures for your organization, be sure to include LGBT people in those lists. If you give information in other languages, be sure to include LGBT content in each language.

2. SPREAD THE WORD. Reach out directly to LGBT communities with information about your services and expertise. Research LGBT populations in your area—who they are, what legal needs they may have, how you might best connect with them. Spread the word about your work through relevant publications, word of mouth, and organizational connections, as well as by supporting and attending LGBT community events.

3. PARTNER WITH LGBT ORGANIZATIONS. Partnering with LGBT organizations and community groups is crucial to building successful outreach. Research potential partners and create genuine, mutually beneficial relationships with them. Be an ally, share your resources, and open yourself to learning from their experiences. Draw on your community partners’ relationships with LGBT individuals to increase visibility and attract potential legal aid clients. Some groups you may consider partnering with are culturally based LGBT groups, policy organizations, political groups, safe-school organizations, faith-based groups and open and affirming churches, LGBT health and wellness projects, LGBT community centers, LGBT youth and family organizations, and LGBT employee groups.

At the larger community level, show your commitment to LGBT inclusiveness and equality by supporting and participating in LGBT community events, such as annual LGBT Pride parades, organizational fund-raisers, film screenings or festivals, or LGBT cultural events.

4. SPEAK OUT ON LGBT RIGHTS. Show your solidarity with LGBT communities by signaling your support for civil and human rights. For example, if an LGBT-bullying incident or hate crime surfaces in your community, you could conduct legal rights workshops to educate community members on the issues and to reach other potentially affected victims.

Intake Systems
Many legal aid organizations do not currently inquire about a client’s gender identity or sexual orientation. This, however, can make serving LGBT clients difficult. The best practice is to incorporate questions about gender identity and sexual orientation into your standard intake form and allow clients to self-identify. For some organizations, changing the standard intake form may not be possible. The next best practice is to include these questions in the intake interview for all prospective clients. At a minimum, every advocate and intake worker must be trained and prepared to have respectful discussions about sexual orientation and gender identity with clients.

Why Asking Questions about Sexual Orientation and Gender Identity Matters. Clients must be able to talk about sexual orientation and gender identity with you. Asking about sexual orientation and gender identity sends an affirming and welcoming message to LGBT clients. And by allowing clients to self-identify their gender, our advocates can then use appropriate pronouns, titles, and chosen names to address and advocate for them appropriately and respectfully.

Another reason why we ask our clients to self-identify is directly related to legal counseling. We need the information to help us better understand our clients’ circumstances, determine whether they may have legal claims related to sexual orientation or gender identity, and openly ask questions to help develop the legal theories of their cases. Self-identifying on an intake form or in the intake interview allows each client to disclose the client’s identity to us in a direct, matter-of-fact way. The advocate can then ask questions and explore whether the client’s identity is tied in any way to the client’s legal issues. While our clients may not always come to us with legal problems that appear at first glance to be tied to LGBT issues, we must know how our clients self-identify.
because clients often do not realize that they may have legal protections as LGBT people.

For example, a client comes to your office with what appears to be an unemployment insurance denial. The client explains that he was asked to resign from work voluntarily because he was truant. The employer challenges his application for benefits because it argues that the client quit work voluntarily and without good cause. After several interviews, the client discloses that he is gay. The advocate then explores whether the client suffered harassment at work. Indeed he had been harassed because of his gender presentation, and he was not aware that harassment based on failure to conform to stereotypes about gender could be illegal under Title VII. He was aware that the harassment caused him depression and in turn caused him to be late to work, but he did not know that the harassment was relevant to his the client’s sexual orientation, the advocate could ask the client whether the client had listed a domestic partner or same-sex spouse on any employee benefit forms, thereby giving the employer actual knowledge about the client’s sexual orientation. Asking for information about the client’s sexual orientation and about a same-sex spouse or partner on the intake form or up front in the intake interview can help the advocate quickly investigate and collect evidence for the case.

For some cases, the need to gather information and rule out LGBT discrimination can be extremely urgent. Take, for example, eviction cases. If a client gets a three-day notice to pay rent or quit, the advocate needs to be able to investigate quickly whether the eviction was based on discrimination. If the client discloses an LGBT identity, the advocate can explore whether LGBT discrimination played a role in the eviction case.

The best practice is to incorporate questions about gender identity and sexual orientation into your standard intake form and allow clients to self-identify.

Inquiring about a client’s gender identity opens up a discussion about strategies for preventing discrimination. For a transgender client, you may need to explore whether the client has identity documents that align with the client’s gender identity and lived name. This may lead to additional legal counseling around options and strategies for presenting the client’s identity before administrative agencies and courts.

A client’s gender identity may also lead the advocate to advise the client to obtain a court-ordered legal name and gender change. Many transgender clients are not aware of the legal requirements for obtaining such changes. Instead many suffer harassment and “outings” in their daily transactions with the world because their identity documents do not contain their lived gender markers and names.

Counseling on this topic is part of an overall advocacy strategy for transgender clients.

**HOW AND WHERE QUESTIONS ABOUT GENDER IDENTITY AND SEXUAL ORIENTATION SHOULD BE ASKED.**

In order to get information about sexual orientation and gender identity, we must be able to preserve the client’s right to confidentiality. The context in which our clients give us this information must also be kept private. Intake forms and interviews should be completed in private in such a way that the information is not shared with third parties. Considerations of privacy should already inform an organization’s procedures because clients often disclose confidential information in forms and interviews.

One approach to asking questions about gender identity and sexual orientation could involve asking these questions in the section inquiring about other demographic data. Under a section inquiring about a client’s age, race, and so on, you could ask the client to self-identify gender and sexual orientation in the following manner:

**Gender (check all and any that apply):**

I consider myself:

___ Male
___ Female
___ Transgender male
___ Transgender female

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[“Transgender” means a person whose gender identity is different from the gender assigned at birth.]

**Sexual Orientation:**

I consider myself:

___ Straight/Heterosexual
___ Bisexual
___ Gay
___ Lesbian

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11 This blank space may be used by a client to self-identify however the client chooses.
By giving clients the opportunity to self-identify sexual orientation and gender, we open up an attorney-client relationship that allows for a more effective investigation, thorough counseling, and impactful advocacy strategy. By asking clients to self-identify sexual orientation and gender, we can better serve them.

**INTAKE PRACTICE TIPS.** The following are practical tips for respectful and helpful intake communication.

1. **ASK ABOUT A CLIENT’S SEXUAL ORIENTATION OR GENDER IDENTITY JUST AS YOU WOULD ASK ANY OTHER QUESTIONS ABOUT THE CLIENT’S LIFE OR IDENTITY.**

When collecting information from a client, include questions about the client’s sexual orientation and gender identity, along with questions about other background characteristics.

Do not create a stigma when asking these questions by stating that the questions are “personal questions” or may be “sensitive.” Telling a client that questions about sexual orientation or gender identity are going to be too personal or sensitive sends the message that there is something wrong with being LGBT or that you are uncomfortable with LGBT clients. In reality, your entire intake sheet may involve personal or sensitive questions. Questions about a client’s race, income, citizenship, and experience with domestic violence, or other similar questions, are all personal and sensitive in nature. But saying they are so does not help a client share this information with you. Instead, at intake’s very beginning, let the client know that the client’s information will be kept confidential and is to be used for purposes of providing needed services, and then make sure that you keep the information confidential according to your organization’s protocol.

2. **USE LANGUAGE THAT DOES NOT IMPLICITLY ASSUME THE CLIENT’S SEXUAL ORIENTATION OR GENDER IDENTITY.** Using inclusive language that does not assume the gender of your client or your client’s significant other sends a message that your client can talk to you safely about the client’s sexual orientation or gender identity. Use such inclusive language with all clients, not just the ones whom you think may be LGBT—you cannot tell by looking at a client what the client’s sexual orientation or gender identity is. For example, ask a client “Are you in a relationship?” instead of “Do you have a boyfriend?”

3. **BE PREPARED TO TALK ABOUT ISSUES OF SEXUAL ORIENTATION AND GENDER IDENTITY IN A PROFESSIONAL, NONJUDGMENTAL WAY.** Whatever your intake method, be sure that you and your colleagues are prepared to talk about issues of sexual orientation and gender identity in a professional, nonjudgmental way that respects all clients at all intake stages. A client may not initially be comfortable discussing gender identity or sexual orientation with intake staff or may not realize that such information could be relevant to the client’s legal case. Some LGBT clients may disclose aspects of their sexual orientation or gender identity after the initial interview, or they may have legal issues that require staff to ask further questions about identity, family life, or medical history and needs. Being prepared to ask about and receive this information without making assumptions about a client’s sexual orientation or gender identity at the outset, and being able to talk with a client about the client’s options without judgment, are ways to maintain a respectful and professional environment for LGBT clients.12

While understanding the basic terminology related to sexual orientation and gender identity, you must allow each client to describe the client’s own identity even if the term that the client uses may not seem to match your understanding of the term. For example, a woman who is in a relationship with another woman may identify as gay instead of lesbian, or she may identify as bisexual. Persons can identify as transgender regardless of how they express their gender and whether or not they have had any surgery or medical treatment. We do not need to inquire into a client’s life, dating practices, or medical history to understand how the client self-identifies—all we need to know is which terms the client wishes to use.

Clients may also identify as queer, gender-queer, or by other terms you might not commonly use or hear. If you work with clients in other languages, you should connect with native speakers of those languages who work with the LGBT community to find out what terms are considered appropriate and respectful.

4. **BE PREPARED TO GIVE A CLEAR EXPLANATION IF A CLIENT ASKS WHY YOU ARE ASKING ABOUT SEXUAL ORIENTATION AND GENDER IDENTITY.**

If the client does ask why you are inquiring about gender identity and sexual orientation, you can explain that you serve a diverse community and want to do a better job of serving the community. You can also note that you are looking for ways to improve your outreach and services to the LGBT community and that a person’s gender identity or sexual orientation might have some legal relevance to certain claims. You can explain to the client that giving this information may help you decide on the best strategies and legal theories and helps you avoid making decisions or recommendations based on assumptions.

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12 For more detailed best practices on how to ask people about their sexual orientation especially, see Sexual Minority Assessment Research Team (SMART), Williams Institute, Best Practices for Asking Questions about Sexual Orientation on Surveys (Nov. 2009).
Case Handling

Ensure that your systems and policies for handling cases are set up to allow you to serve LGBT clients respectfully. Making the following small adjustments to your case management procedures can help you provide consistently respectful services.

1. Develop Systems to Ask about, Make Note of, and Use Clients’ Preferred or Lived Names. Ask each client, especially your transgender clients, what name the client uses in everyday life. If a client has a legal name on a birth certificate that is not used in daily life, you may want to enter the client’s lived name in your case management system with a case alert that the client has another name and what that name is. As a best practice, use the client’s lived name on files, intake forms, and case management systems so that when the client calls or comes in, the front desk and the advocate are in the habit of using the client’s lived name.

2. Ensure That Staff Members Have Access to Client Information As Necessary. Have a process in place for ensuring that everyone who interacts with a client knows the client’s lived name or gender if either differs from the client’s legal name or gender. Also, have processes in place to share relevant information about a client’s sexual orientation and gender identity with those who are working on the case so that the client does not need to keep repeating them.

3. Develop Systems of Record Keeping That Are Respectful of LGBT Clients. Your case management system should be set up to allow a same-sex partner to be listed as a client’s partner, and staff should be instructed to note any legal relationships between the client and the client’s partner. What can be legally significant is if the client and partner are legally married, in a civil union, or in a domestic partnership—even if the state they live in does not recognize their relationship.

Case files for transgender clients should be labeled with the client’s lived name, even if it is not the client’s legal name, and the client’s lived gender should be marked in the demographic data.

4. Demonstrate Respect for Clients and Their Identities in Interactions with the Court. Be sure to show respect for LGBT clients and their identities in all interactions with the court. One way of showing respect is by using a client’s lived name and gender pronouns to the greatest extent possible (checking with the client beforehand that this is appropriate). Before you use a client’s lived name and pronouns in court pleadings, include a brief note that you plan to do so. When a transgender client’s name and gender have been legally changed, and there is no issue in the case relating to the client’s gender, there is no need to explain the former name or transgender status on pleadings or other documents.

5. Respect Client Confidentiality Around Sexual Orientation and Gender Identity. Sometimes a client may not want information about sexual orientation and gender identity shared outside your organization. Put processes in place for maintaining the confidentiality of such information in the event a client wishes to keep the information private. For example, forms should have a space to mark clearly that a client does not wish to have the client’s legal name shared with others outside the organization (as this might oust them as transgender). In general, staff should check with the client before sharing information about the client’s sexual orientation or gender identity outside the organization.

By making small changes in practices and policies, legal services organizations can make a big difference in allowing LGBT clients to access services and receive competent representation. Talking with clients about sexual orientation and gender identity helps create a respectful and welcoming environment. It also allows advocates to identify information necessary for competent representation; even if your state does not have specific laws prohibiting discrimination based on sexual orientation or gender identity, your client may have federal claims, and even if your state does not recognize marriages between same-sex couples, the federal government recognizes these marriages for many purposes. Without creating a space for LGBT clients to talk about sexual orientation and gender identity, advocates may miss potential claims and legal protections, thereby preventing them from fulfilling their ethical responsibilities to provide competent representation. Legal services organizations are already serving LGBT clients, but without changing our practices and policies to allow us to provide respectful and competent services to them, we cannot fulfill our mission to ensure that all people have equal access to justice.

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Federal Anti-LGBT Discrimination Law

Employment

Title VII of the Civil Rights Act of 1964

Title VII expressly prohibits discrimination on the basis of sex. Under this law, it is “an unlawful employment practice” for an employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C.A. § 2000e-2(a)(1)

Though Title VII does not use the terms “sexual orientation”, “gender identity”, or “gender expression”, theories of liability under the statute provide protection to LGBT employees. For example, since the Supreme Court’s decision in Price Waterhouse v. Hopkins, 490 U.S. 228, 258, 268-69 (1989), courts have found that discrimination based on non-conformity with gender stereotypes amounts to prohibited sex discrimination. Thus, an adverse employment action, such as a refusal to hire an applicant or an employee termination, may be actionable if it was motivated by the employee’s defiance of gender stereotypes.

Title VII protects LGBT employees according to several federal court decisions and rulings by the Equal Employment Opportunity Commission (EEOC). The EEOC has catalogued these court and administrative decisions at its website, www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm. With respect to discrimination against gay, lesbian and bisexual employees based on sexual orientation, the EEOC has observed, sexual orientation “cannot be defined or understood without reference to sex,” Baldwin v. Foxx, E.E.O.C. Decision No. 0120133080, 2015 WL 4397641, at *5 (July 16, 2015). For this reason, the EEOC has concluded that “[s]exual orientation discrimination is sex discrimination because it necessarily entails treating an employee less favorably because of the employee’s sex.” Id. Recently the Second Circuit ruled similarly in Christiansen v. Omnicom Group, Inc., Docket No. 16-748 (Mar. 27, 2017). However, the 7th Circuit has taken a different stance, and the issues continue to be litigated. See Hively v. IVY TECH COMMUNITY COLLEGE, No. 15-1720, 7th Circuit (July 28, 2016).

In Macy v. Dept of Justice, EEOC Appeal No. 0120120821 (April 20, 2012); 2012 WL 1435995 (E.E.O.C.), the EEOC determined that discrimination against an individual because that person is transgender (also known as gender identity discrimination) is discrimination because of sex. The EEOC’s decision was based in part on the Sixth Circuit’s decision in Smith v. City of Salem, Ohio, 378 F.3d 566 (6th Cir. 2004), in which the Court of Appeal reversed the district court’s dismissal of a Title VII claim by a transgender employee alleging discrimination due to “his failure to conform to sex stereotypes concerning how a man should look and behave.” The Sixth Circuit declined to follow pre-Price Waterhouse decisions from the Seventh and Ninth Circuits that refused to extend Title VII protection to transgender employees.

Title VII also bars sexual harassment, including same-sex sexual harassment. Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 64 (1986) (Title VII prohibits not only discrimination in the “terms” and “conditions” of employment, but “evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in employment.”); Oncale v. Sundowner Offshore Services, 523 U.S. 75 (1998). For liability to arise from sexual harassment, the misconduct must be severe and pervasive, as objectively determined by a reasonable person in the plaintiff’s position, considering all of the circumstances.
Executive Orders and Executive Agency Directives

On July 21, 2014, then president Obama issued Executive Order 13672, expanding anti-discrimination protections for workers employed by or seeking jobs with federal contractors and subcontractors to include protections for sexual orientation and gender identity. The Office of Federal Contract Compliance Programs is tasked with implementing the order. This executive order will remain in effect until a subsequent executive order or other law revokes it. To date, President Trump has not rescinded this order.

However, on March 27, 2017, President Trump issued an executive order revoking former president Barack Obama’s Executive Order 13673, which took aim at LGBT discrimination by requiring federal contractors to disclose whether they have previously been held liable for discrimination against vulnerable groups, including LGBT individuals. By eliminating this requirement, federal government decisions about which companies to do business with no longer weigh a company's history of LGBT discrimination as part of this decision-making.

EEOC Management Directive 110 requires EEO counselors to follow certain procedures when the complainant alleges sexual orientation discrimination, including assisting individuals in clearly defining their claims. Under the directive counselors must have a sufficient familiarity with federal anti-discrimination law to enable them to identify claims correctly. The directive further explains that “Title VII’s prohibition against sex discrimination includes discrimination on the basis of pregnancy, sexual orientation and gender identity including transgender status.” EEO MD-110 at 2-8 (as revised, August 5, 2015).

Housing

Though the federal Fair Housing Act does not explicitly prohibit discrimination based on sexual orientation or gender identity, certain complaints of housing-related discrimination involving sexual orientation or gender identity may be covered pursuant to HUD regulations and guidelines. In 2012, HUD promulgated its LGBT Equal Access Rule. The full title for the rule is Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662 (Feb. 3, 2012) (to be codified at 24 C.F.R. pts. 5, 200, 236, 400, 570, 574, 882, 891, and 982). Below are highlights from the LGBT Equal Access Rule.

- The rule clarifies that certain forms of sex discrimination that are actionable under the FHA.
  - “The Fair Housing Act’s prohibition of discrimination on the basis of sex prohibits discrimination against LGBT persons in certain circumstances, such as those involving nonconformity with gender stereotypes.”
  - “HUD may also have jurisdiction to process a complaint filed under the Fair Housing Act if an LGBT person obtains housing but then experiences discrimination in the form of sexual harassment. Sexual harassment is illegal under the Fair Housing Act if the conduct is motivated by sex and is either so severe or pervasive that it creates a hostile environment or the provision of housing or its benefits is conditioned on the receipt of sexual favors (for example, as quid pro quo).”

- The General Equal Access provision of the rule states that a “determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall be made in accordance with the eligibility requirements provided for such programs by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.” 24 C.F.R. § 5.105(a)(2).

- The rule clarifies that the definition of family for purposes of HUD programs may not discriminate on the basis of sexual orientation, gender identity or marital status.
  - For purposes of Section 8 and public housing, “Family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status: (1) A single person . . . [and] (2) a group of persons residing together.” 24 C.F.R. § 5.403.
Other HUD programs, such as supportive housing programs for the elderly and people with disabilities, include regulatory definitions of family and eligibility requirements that refer back to the LGBT inclusive language contained in Section 5.403. See e.g., 24 C.F.R. § 891.

- The rule prohibits lenders approved by the Federal Housing Administration from basing eligibility for an FHA-insured loan on factors unrelated to income eligibility, such as actual or perceived sexual orientation or gender identity.
  - In 2012 HUD reached a settlement with Bank of America in connection with the denial of an FHA-insured loan to an unmarried lesbian couple in Florida, who would have otherwise been eligible for the loan.

HUD’s Equal Access Rule will remain in effect, unless a subsequent regulatory action or law revokes it.

**Education**

Federal laws are available that protect LGBT students. On May 13, 2016 the U.S. Departments of Justice and Education released a joint guidance to help provide educators the information they need to ensure that all students, including transgender students, can attend school in an environment free from discrimination based on sex. Under Title IX of the Education Amendments of 1972, schools receiving federal money may not discriminate based on a student’s sex. The guidance, subsequently rescinded by the Trump administration, made clear that both federal agencies treat a student’s gender identity as the student’s sex for purposes of enforcing Title IX. A Fourth Circuit case, G.G. v. Gloucester, is weighing whether Title IX’s prohibition against sex discrimination protects transgender students. The Supreme Court recently remanded the case to the Fourth Circuit for further consideration, after the Department of Justice and Department of Education rescinded the Obama era guidance.

In addition to Title IX, the federal Equal Access Act establishes that LGBT student clubs must be treated equally to other student clubs.
Immigration Relief for LGBT Victims of Crime

Introduction

In general, legal aid organizations that receive federal funds through the Legal Services Corporation are prohibited from representing undocumented immigrants, except in limited circumstances. A LSC-funded legal aid organization may represent an undocumented person who is eligible for temporary immigration relief that is commonly referred to as a “U visa” or “VAWA visa”. U and VAWA visas offer critical protection to LGBT individuals are vulnerable to violence and domestic abuse by partners and rejecting family members. This handout briefly describes both forms of temporary immigration relief.

It is important to be aware that an individual seeking assistance from a legal aid office may be eligible for other forms of immigration relief, apart from U and VAWA visas, such as asylum or a family-based petition. Making a referral to an immigration attorney can be the best approach to insure that the individual receive a full and expert evaluation of their circumstances and any available options to legalize their status.

U-Non Immigrant Status

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 is a federal law that, among other things, provides temporary immigration relief to individuals without immigration status who are victims of certain qualifying criminal activity, suffered mental or physical abuse, and are helpful to law enforcement in the investigation or prosecution of that criminal activity. 8 U.S.C. § 1101(a)(15)(U)(i). The legislation was designed to address the underreporting of serious, violent crimes in immigrant communities, where undocumented individuals frequently fear deportation if they report a crime they have suffered to law enforcement officials.

Individuals may be eligible for U nonimmigrant status if: (1) they are the victim of qualifying criminal activity; (2) they have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity; (3) they have information about the criminal activity; (4) they were helpful, are helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime; (5) the crime occurred in the United States or violated U.S. laws; and (6) they are admissible to the United States, or, if they are not admissible, they have applied for a waiver on a Form I-192.

Under the statute, the qualifying criminal activity consists of specifically enumerated crimes, as well as “any similar activity in violation of Federal, State, or local criminal law . . . or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.” 8 U.S.C. § 1101(a)(15)(U)(iii). Examples of the specifically enumerated crimes include, but are not limited to: abduction, abusive sexual contact, domestic violence, extortion, felonious assault, fraud in labor contracting, rape, sexual assault, stalking, trafficking, and torture.

U nonimmigrant status is valid for four years and includes work authorization. After three years of continuous presence in the United States while in U nonimmigrant status, the individual may apply for permanent residency. The victim (principal applicant) may include certain family members on their petition to legalize their status.

The limit on the number of U visas that may be granted to principal petitioners each year is 10,000. However, there is no cap for family members, such as spouses, children, or other eligible family members, deriving status from the principal applicant. Petitioners placed on the U visa waiting list are granted deferred action or parole, and are eligible to apply for work authorization while on the waitlist for U nonimmigrant status.
**VAWA-Non Immigrant Status**

A battered spouse, child or parent who lacks legal immigrant status may be eligible for temporary immigration relief under the Immigration and Nationality Act (INA), as amended by the Violence Against Women Act (VAWA). This temporary immigration relief is often referred to as a “VAWA visa”. Congress created VAWA visas to provide undocumented individuals suffering abuse at the hands of certain U.S. citizen or legal permanent resident (LPR) family members an avenue to escape without compromising their ability to legalize their status. Congress recognized that undocumented individuals were more likely to suffer and endure domestic abuse by a U.S. citizen or LPR spouse, parent, or child, if their ability to legalize their status was wholly dependent on a family-based petition filed by that abusive relative. Scenarios that VAWA visas are designed to address include situations in which an undocumented spouse is being abused by a U.S. citizen or LPR spouse, or an undocumented child is being abused by a U.S. citizen or LPR parent. The battered individual who petitions for a VAWA visa is able to file their application without the abuser's knowledge. This allows the victim to seek safety and independence from their abuser, who is not notified of the filing. A person with a VAWA visa may be eligible to apply for legal permanent residence.

Individuals may be eligible for VAWA-nonimmigrant status if: (1) they have a qualifying relationship with a U.S. citizen or legal permanent resident; (2) they have suffered battery/extreme cruelty by the victim’s U.S. citizen or permanent resident relative, and (3) they meet the good moral character requirement. Unlike a U visa, a VAWA visa does not require law enforcement certification.

An undocumented individual seeking a VAWA visa based on abuse by a spouse must show the following: (1) a qualifying spousal relationship in which they are currently married to a U.S. citizen or LPR abuser, or the marriage to the abuser was terminated by death or divorce (related to the abuse within the 2 years prior to filing the VAWA petition), or the abuser lost or renounced citizenship or LPR status within the 2 years prior to filing the VAWA petition due to an incident of domestic violence, or victim believed that they were legally married to an abusive U.S. citizen or LPR spouse, but the marriage was not legitimate solely because of the bigamy of the abusive spouse; (2) battery/extreme cruelty by the VAWA petitioner's U.S. citizen or LPR spouse wherein the petitioner or the petitioner’s child has been subjected to the abuse; (3) entered marriage in good faith, not solely for immigration benefits; (4) resided with spouse; and (5) a person of good moral character.

An undocumented individual seeking a VAWA visa based on abuse by a U.S. citizen or LPR parent must show: (1) a qualifying parent/child relationship wherein the VAWA petitioner is the child of a U.S. citizen or LPR abuser, or they are the child of a U.S. citizen or LPR abuser who lost citizenship or LPR status due to an incident of domestic violence; (2) they have suffered battery/extreme cruelty by their U.S. citizen or LPR parent; (3) they resided with their abusive parent; (4) they are a person of good moral character. A child less than 14 years of age is presumed to be a person of good moral character.

An undocumented parent seeking a VAWA visa based on abuse by a U.S. citizen child must show: (1) a qualifying parent/child relationship wherein the VAWA petitioner is the parent of a U.S. citizen abuser who is their son or daughter who is at least 21 years old at the time of the self-petition, or their abusive U.S. citizen child lost or renounced citizenship due to an incident of domestic violence, or the VAWA petitioner is the parent of a U.S. citizen child who was at least 21 years old and who died within 2 years of the self-petition; (2) they have suffered battery/extreme cruelty by their U.S. citizen child; (3) they resided with their child; (4) they are a person of good moral character.

An individual who has VAWA non-immigrant status is eligible for work authorization and, after a period of time, may be eligible for legal permanent residence.
Post Name Change Instructions – NY State

Congratulations on legally changing your name! Now that you have changed your name through the court, you will need to make sure that government agencies and private entities are aware of your new name.

A certified copy of the name change order is the document you will use as proof of the new name. In general, do not give away certified copies of your name change order. Show the order and take it back or provide a photocopy. If photocopying the name change order, do not remove the certification or the staples. It invalidates the certification. You can also scan the order and print out copies.

Social Security

Take the following to a local Social Security office to update your name & gender and have a free replacement card mailed to you:

- A certified copy of your name change order (they look at it, but do not keep it).
- Unexpired photo ID, such as a drivers' license, state ID, or passport. This can be in your old name.
- Doctor’s letter (original, not a photocopy) to change the sex (refer to our sample letter) or a passport or birth certificate with the corrected sex. (Optional.)
- Take your current card if you have it, but it is not required.

Find a local Social Security office here: https://secure.ssa.gov/apps6z/FOLO/fo001.jsp

You can also file by mail if you include an original photo ID, such as a passport, which they will return to you.

Filling out the form

- Use Form SS-5, Application for a Social Security Card, the same form used for applying for a new card. They have the forms at the office, so fill it out while you wait, or you can download it: https://www.ssa.gov/forms/ss-5.pdf.
- In the first blank, “name to be shown on card,” put your new legal name. List your name at birth on the line below that.
- Leave the “other names used” section blank unless you have
changed your name legally before.
✓ Select the new sex if you have the letter from your doctor.
✓ You do not need to list your parents’ Social Security numbers.

Ask to speak with a supervisor if there is any problem. The change is effective within 24 hours, and you will receive your new Social Security card in the mail.

**Changing a Social Security number**
Your number will remain the same. Social Security numbers are typically changed only when one can present evidence documenting harassment or abuse. You can apply at your local office. Visit [http://ssa.gov/pubs/10093.html](http://ssa.gov/pubs/10093.html) for more information.

**DMV**
To change your driver license or NY state ID, visit a local DMV branch. You can save time at the DMV by reserving an appointment online before you go. You must print out a confirmation page: [https://visit.dmv.ny.gov/onlineReserve/indexB.html](https://visit.dmv.ny.gov/onlineReserve/indexB.html)

Bring the following documents:

- **Proof of your identity.**
  - If you already have a New York State driver license or ID card (current or expired less than two years ago), that is all you need to get a new ID.
  - If you do not currently have a NY license or ID, you will need your Social Security card, proof of date of birth, and four “points” worth of ID. To avoid a wasted trip, review the ID requirements before going to the DMV: [http://www.dmv.ny.gov/forms/id44.pdf](http://www.dmv.ny.gov/forms/id44.pdf). People under 21 can get a parental statement of identity ([https://dmv.ny.gov/forms/mv45.pdf](https://dmv.ny.gov/forms/mv45.pdf)) if you cannot otherwise prove your identity.
  - Your proof of identity can be in your old or new name.

- **A certified copy of your name change order (they look at it, but do not keep it).**

- **Provider letter to change the sex (refer to our sample letter).**

- **Payment of a fee of $12.50 for a new driver license, or $5.00 for a new non-driver ID, if you already had one. If applying for the first time, the fee is approximately $65 for a license or $13 for an ID card ($6.50 if receiving SSI).**

**Filling out the form**

- Use Form MV-44, which you can obtain at the DMV or you can download the form at [http://www.dmv.ny.gov/forms/mv44.pdf](http://www.dmv.ny.gov/forms/mv44.pdf)

- Fill out the top part of the form with your new name. List your old name in the
box that asks about former names.

✓ Check the box for the sex that you want on your ID. Then, in the box marked Other Change, write that you are changing the sex.

✓ To update your voter registration record, fill out page 3!

You should update your insurance card before going to DMV. If you have a car registered in your name, DMV will require you to update those documents at the same time that you replace your driver license.

Ask to speak with a supervisor if there is any problem. The DMV will give you a new temporary non-photo ID right away, and will mail you your permanent one in two to six weeks.

**U.S. Passport: an alternative to a birth certificate**

If you are unable to update the sex on your birth certificate, you can use a passport in many situations where you might need to show a birth certificate. You can get the sex designation changed on a passport with a specific letter from a doctor. No surgery or hormones are required.

You can also get a passport card (a wallet-sized card not valid for international air travel) with your correct name and sex designation for $55 (you can get both a book and a card for $165 total). See separate checklist for the documents you will need to apply for or correct a U.S. passport.

**Global Entry and TSA Pre✓**

If you be travelling regularly, consider getting a Global Entry card, which costs $100 and is valid for 5 years. In addition to streamlining the return from international travel, it enables you to enroll in TSA Pre✓, which allows you to bypass the body scanners (and long security lines) for all flights. Wait to apply until after you get the corrected passport. You will need to go in person to have a photo taken and be fingerprinted. Begin by applying online: [https://www.cbp.gov/travel/trusted-traveler-programs/global-entry/how-apply](https://www.cbp.gov/travel/trusted-traveler-programs/global-entry/how-apply) If you know you will not be travelling internationally, TSA Pre✓ alone is $85 for 5 years: [https://www.tsa.gov/precheck](https://www.tsa.gov/precheck)

If you already have a Global Entry card, the name and gender will be updated automatically in the system when you update the passport. Once you get the passport back, you can log into your account and confirm that they’ve updated it. [https://goes-app.cbp.dhs.gov/main/goes](https://goes-app.cbp.dhs.gov/main/goes)
It is not necessary to update the physical card because it does not ever need to be presented anywhere, but it can be used instead of a passport for land and sea entries. If you wish to change the physical card, you must go in person to the US Customs House at 1 Bowling Green, New York, NY 10004. You must call to make an appointment (212) 344-2296, which are typically between 8 am and noon M-F. They suggest waiting until you get another photo ID (a NYS ID card, for example) so that you have a second form of ID when you go. The new card fee is $25.

**Selective Service**

If you are registered with Selective Service and are under 26, you must change your name with them within **ten days** of your legal name change. You will be mailed a new card. Only people assigned male at birth must register. If you were assigned male at birth, you must register upon turning 18 even if you have changed your sex designation to female prior to that time. If you are between the ages of 18-25, you can register online: [https://www.sss.gov/Home/registration](https://www.sss.gov/Home/registration). Trans men may request an exemption letter here: [https://www.sss.gov/Status.html](https://www.sss.gov/Status.html)

To change your name, send Selective Service a letter including your full name, Social Security Number, Selective Service Number, and date of birth, as well as your mailing address. Sign and date your Selective Service card and include it. You must include a certified copy of your name change order with the letter.

Mail to:
Registration Information Office
Selective Service System
Data Management Center
P.O. Box 94638
Palatine, IL 60094-4638

**Schools**

Show the registrar’s office a copy of the name change order. Oftentimes schools that have updated records previously will maintain the legal name in a private file, so provide a photocopy of the name change order and make sure they completely update their records. Request that the sex also be updated on all records. They will probably want to see a corrected passport or birth certificate to do so.

**Health insurance**

You can write a letter to the insurance company and include a photocopy of the name change order. You can call the number on your card to find out what documentation they require to change the sex designation. You may be asked to provide a corrected birth
certificate. Make sure that doctors’ offices submit bills under the corrected name and sex designation.

**Credit reporting agencies**

You can update your name directly with the three credit reporting agencies by mailing them a photocopy of your name change order and a cover letter (see sample below and include your Social Security number). Some people have had success with including this request in the letter, although it may cause you to lose a good credit history: “I am requesting that you remove my old name entirely from your credit reports and do not list it as a former name.” Mail your request to each agency:

- **Equifax Information Services**
  - P.O. Box 740256
  - Atlanta, GA 30374

- **TransUnion LLC**
  - P.O. Box 2000
  - Chester, PA 19022

- **Experian**
  - National Consumer Assistance Center
  - P.O. Box 4500
  - Allen, TX 75013

**Other places to change your name**

You will need to change your name with places like banks, credit cards, libraries, student loans, etc. You can change your name at these places by visiting them in person and presenting a copy of your name change order or by writing letters.

When writing a letter, include your address and any account numbers, and request that they change your name from your old name to your new one. Enclose a photocopy of your name change order. Most businesses do not require a certified copy. **When photocopying your name change order, do not remove the receipt or the staples.**

**Financial & estate planning documents**

It’s best to change your name where it appears in wills or is listed as beneficiary for an IRA, life insurance policy, etc.

**Getting additional copies of the name change order**

You will probably not need any additional certified copies (do not give them away lightly). However, you can obtain additional certified copies of your name order from the county clerk in the county where the order was issued. Name change files that have been sealed require getting a temporary unsealing order, so it is best to avoid giving away certified copies.
Sample letter requesting name change from a private entity

When writing to private entities, use only a photocopy of the name change order, not a certified copy.

[Your name address & phone number]

[Date]

[Name & address of company]

Re: Request to change name [on account #]

To Whom It May Concern:

I am writing to request a name change on my [health insurance, bank account, etc.], account number [account, member number] from [old name] to [new name]. Please also update the title from [Ms. to Mr.]

Enclosed is a photocopy of my name change court order.

[If relevant] Please also update the sex designation on your records from [female to male]. Enclosed is a copy of a doctor’s letter documenting this change.

If you have any questions, please call me at the number above. Thank you for your prompt attention to my request.

Sincerely,

[Your new name]

Enclosure
Sample Doctor’s Letter for Sex Designation Changes

This letter meets federal requirements to change the sex designation with Social Security, on a passport, or on immigration documents. It can also be used to change the sex designation with the NY DMV.

Sample letter meeting federal government requirements:

Date

I, [Physician’s Full Name], am the physician of [Preferred Name of patient a/k/a Current legal name], DOB: [Date of Birth], with whom I have a doctor/patient relationship and whom I have treated [or with whom I have a doctor/patient relationship and whose medical history I have reviewed and evaluated].

[Preferred Name of Patient] has had appropriate clinical treatment for gender transition to the new gender of [specify male or female].

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct.

Signature of Physician
Typed Name of Physician
[issuing U.S. State/Foreign Country of medical license/certificate & physician’s medical license or certificate number]

Requirements for this letter:

- Printed on letterhead that includes:
  - Physician’s address
  - Telephone number
- Signed by an MD or DO
- Provide two original copies to the patient.
  - Photocopies and scans are not acceptable.
  - Ideally, sign in blue ink.
Passport Correction / Application Checklist (Adults)

Take the items below to a Passport Acceptance Facility (find one here: http://iafdb.travel.state.gov). If the clerk gets confused, simply ask to speak with a supervisor. Feel free to call us as well.

- Completed form DS-11 (available at the post office). You must use this form even if you already have a passport. Fill out using your new name and gender. Do not sign until in front of the passport agent.
- One new 2 x 2 color passport photo.
- Your current passport (if you have one).
- Your photo ID (can be your passport if issued less than 15 years ago).
- Photocopy (single-sided) of the front and back of your photo ID.
- Certified copy of your birth certificate (Not necessary if you are submitting an existing passport. It will be returned to you. It can be in the old name and gender.).
- A certified copy of your name change order.
- An original (not an emailed or scanned copy) letter from a medical doctor regarding the gender change (unless you never had a passport before and have a corrected birth certificate). If you must retain the original letter, you can request that they make a photocopy.¹
- Check or money order made out to the U.S. Department of State - $110 for a passport book, $140 for a passport book & passport card.
- $25 execution fee (can usually use credit/debit card, cash, money order, or personal check payable to the acceptance facility; you can take a blank check if you are unsure).

Visit http://travel.state.gov/passport/get/get_4855.html for more information about obtaining a passport.

¹ “If the applicant requests that the original medical certification be returned, you may attach a clear photocopy of the medical certification, clearly annotate that the original medical certification was seen and returned, and return the original medical certification to the applicant.” 7 FAM 1331 Appendix M, Adjudicating Gender Change Cases, https://fam.state.gov/fam/07fam/07fam1300apM.html
PLANNING WORKSHEET: Identifying Opportunities and Next Steps to Expand Your Organization's Ability to Serve Transgender Clients

This worksheet is designed to help you synthesize your thoughts and ideas, and to create an action plan for strengthening your organization's work on serving transgender clients.

We suggest starting with identifying a few priority issues or concerns and sharing them with your small group. We have identified six areas where organizations could improve services to transgender clients, which may help you think of priorities or concerns:

1) Leadership/Vision
2) Welcoming Climate
3) Intake
4) Case Handling and Legal Issues
5) Outreach
6) Staff Training

In choosing priorities, consider both what is most urgent and also what your organization is best positioned to accomplish right now.

Then, pick a couple of issues you have chosen, and identify one or more action steps that will help advance your goals or address your concerns. Record those in the chart along with a proposed timeline, and who you can approach to be responsible for moving the steps forward.

We encourage you to take a photo of or scan this worksheet once you are done, and set a date in your calendar a few weeks or months out from now to review this worksheet and see how far you have gotten in the steps you wanted to take.

You can also use the provided assessment tool when you have more time within your organization to identify additional priorities and concerns, then use this planning worksheet or something similar to decide on what actions to take to address them.
<table>
<thead>
<tr>
<th>PRIORITY ISSUES</th>
<th>ACTION STEPS</th>
<th>SUGGESTED TIMELINE</th>
<th>WHO'S INVOLVED?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Example: Review and update intake process to be more inclusive</td>
<td>- Update forms with more inclusive language re: gender&lt;br&gt;- Consider best way to ask about and record clients' name and gender&lt;br&gt;- Provide a discussion and practice session for all staff who do intakes</td>
<td>- by November 15&lt;br&gt;- by November 15&lt;br&gt;- December</td>
<td>- Mia&lt;br&gt;- Mia and Ben&lt;br&gt;- Intake team; Ben lead</td>
</tr>
</tbody>
</table>
This tool is designed to assist legal aid advocates in assessing their organizations preparedness to serve transgender clients in a culturally competent way/through the lens of cultural humility. It offers both a way to take stock of current efforts and a set of benchmarks for the design and implementation of future work. We encourage you to use this tool as a basis for dialogue and to help you identify areas for further inquiry and development.

This tool was adapted from a tool developed by NCLR and CRLA to assess an organization’s ability to serve LGBTQ clients generally.

Instructions:

1. Carve out sufficient time to complete and discuss this assessment. As noted above, you may wish to do the assessment over multiple sessions, looking at one or two sections each time.

2. Turn to the next page and read the section on Leadership and Vision. Indicate your responses to the checklist of indicators. Then, using the bottom of the page, jot down any overall reflections or priorities you have related to the topic in question.

3. Repeat this process with each section until you have completed them all.

4. Be sure to follow up any individual reflection with a larger team or staff discussion.
LEADERSHIP/VISION

<table>
<thead>
<tr>
<th>Practice Indicator</th>
<th>What is the organization already doing in this area?</th>
<th>Ideas for improving LGBT cultural competency in this area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organizational leaders can/do articulate how working with transgender clients is part of the organization's core mission.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The organization makes space to talk about trans* issues when making organizational decisions (e.g. program priorities, funding opportunities, staff assignments, framing discussions, etc).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The organization is willing to commit the resources necessary to fully serve transgender clients, even though they may be a small percentage of the client base.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Existing transgender-inclusive policies within the organization are well-publicized; staff know about them.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Comments:
### WELCOMING CLIMATE

<table>
<thead>
<tr>
<th>Practice Indicator</th>
<th>What is the organization already doing in this area?</th>
<th>Ideas for improving LGBT cultural competency in this area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Visible images and materials in the reception area are inclusive of transgender people and issues.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Visible images and materials in other parts of the office (e.g. interview rooms, advocates' offices) are inclusive of transgender people and issues.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If the organization has an area where clients can pick up materials on substantive legal and/or community issues, the materials include content relevant to transgender clients.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A potential client who is transgender would feel comfortable and welcome coming into our office and seeking help.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff who function as the &quot;first point of contact&quot; within the office are sufficiently comfortable with transgender terms and issues to speak openly with transgender clients about their lives.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All staff are comfortable serving clients who are transgender and/or who do not conform to traditional gender stereotypes.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All staff use inclusive language when talking with clients, and refrain from acting only on assumptions about a client’s gender based solely on their appearance, voice, or identity documents.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>We have gender neutral restroom facilities and/or a restroom policy that allows clients and visitors to choose which restroom to use.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transgender staff members are comfortable and welcome to be their full selves in our office.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The organization provides a comfortable environment for non-transgender staff allies to raise and discuss issues related to transgender people.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Comments:
# INTAKE

<table>
<thead>
<tr>
<th>Practice Indicator</th>
<th>What is the organization already doing in this area?</th>
<th>Ideas for improving LGBT cultural competency in this area</th>
</tr>
</thead>
<tbody>
<tr>
<td>For clients who are transgender or do not conform to traditional gender stereotypes:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Staff are able to respectfully ask about a client’s preferred name and gender in a way that does not convey discomfort with the topic.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Staff consistently use clients' preferred name and gender pronouns once learning of them.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Our intake process includes questions that would identify the ways in which gender identity might affect a client's case.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If the organization uses standard intake questionnaires or written guides, these materials include references to gender identity. For example: our forms ask clients to self-identify their gender identity; we ask clients to indicate whether they believe their case involves discrimination based on things like race, gender, gender identity, sexual orientation or immigration status; etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Client intake is conducted in a private enough space to allow people to talk about gender identity in a comfortable, confidential manner.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff who conduct intakes in languages other than English are familiar with and comfortable using respectful terminology related to transgender people in the languages they use.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Comments:
### CASE HANDLING AND LEGAL ISSUES

<table>
<thead>
<tr>
<th>Practice Indicator</th>
<th>What is the organization already doing in this area?</th>
<th>Ideas for improving LGBT cultural competency in this area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Our organization has a process for ensuring that everyone who interacts with a client knows their preferred name/gender if it differs from their legal name/gender.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Our organization has a process for maintaining confidentiality around information about sexual orientation and gender identity if clients wish to keep this information private.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The system we use for naming case files makes it possible to label the file using a client's preferred name rather than their legal name, if the two are different.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advocates within the organization can identify the types of legal concerns transgender clients may face within the office’s practice areas.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The organization has advocates on staff who are knowledgeable about substantive legal issues related to transgender clients that may arise in the office’s practice areas.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
For expertise that does not currently exist within the organization, staff advocates know where to go to get the legal information they need to competently represent clients dealing with gender identity related issues.

Comments:
# OUTREACH

<table>
<thead>
<tr>
<th>Practice Indicator</th>
<th>What is the organization already doing in this area?</th>
<th>Ideas for improving LGBT cultural competency in this area</th>
</tr>
</thead>
<tbody>
<tr>
<td>All or most organizational outreach materials include trans-inclusive language and/or topics.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If outreach materials are provided in multiple languages, trans-inclusive language is included in all versions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Our community education efforts include transgender specific issues and/or information in all or most of our efforts.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community education presenters are comfortable discussing transgender issues within general community presentations that are not specifically targeted at transgender or LGB audiences.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>We have an established network of transgender leaders and organizations within the community that we work with for outreach.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Our organization does active, targeted outreach to transgender communities.
<table>
<thead>
<tr>
<th>Practice Indicator</th>
<th>What is the organization already doing in this area?</th>
<th>Ideas for improving LGBT cultural competency in this area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Our staff training and development efforts include trainings on transgender issues.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff who provide the &quot;first point of contact&quot; for clients are specifically trained about how to create a respectful and welcoming first impression that will allow the client to pursue further engagement with our services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attention to transgender issues is woven into all staff trainings, including those related to substantive legal issues.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Comments:
Tips for writing about trans legal issues

When in doubt, simply ask yourself if the language used to talk about trans people would be appropriate to use for cisgender (i.e., non-transgender) people. Would you use the language to describe your own behavior? E.g., If female, do you “dress in” women’s clothing or do you simply wear women’s clothing?

Name and pronouns

Use the individual’s preferred name, pronouns, and honorifics in papers and when speaking to a judge.¹ If the individual has not yet had a legal name change, you can use Preferred Name a/k/a Legal Name and then refer to them by their preferred name.

Defining transgender

Surveys show that most people have a good idea of what transgender means, but it can still be helpful to take charge of the definition by using a footnote such as this.² If the case isn’t about someone’s transgender status, but their transgender status needs to be explained, putting this in a footnote helps to emphasize that it’s not relevant and you are only providing the information to clarify, for example, that a legal name that doesn’t match their preferred name.

<table>
<thead>
<tr>
<th>Preferred terms</th>
<th>Terms to avoid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trans woman, transgender woman</td>
<td>Transwoman, MTF, male-to-female individual</td>
</tr>
<tr>
<td>Trans man, transgender man</td>
<td>Transman, FTM, female-to-male individual</td>
</tr>
<tr>
<td>Transgender person</td>
<td>A transgender</td>
</tr>
<tr>
<td>Sex assigned at birth, assigned sex</td>
<td>Birth sex, natal sex</td>
</tr>
<tr>
<td>Affirmed sex</td>
<td>Target sex, new sex, preferred gender</td>
</tr>
<tr>
<td>Gender dysphoria³</td>
<td>Gender identity disorder</td>
</tr>
</tbody>
</table>

¹ You do not need to explain or justify using the correct pronouns, just use them. A justification can imply that the person is not really entitled to them or that using them is controversial or open for debate. If you are in a jurisdiction where confusion is likely, simply take more care in how you explain that the person is transgender.

² For transgender persons such as Ms. Doe, the sex they were labeled at birth and that was recorded on their birth certificate is not an accurate reflection of their sex. Transgender persons live or seek to live in accordance with the sex of their brain—an immutable, intrinsic sense of being physically male or female—rather than the sex incorrectly ascribed to them at birth. This typically involves a process of coming to live openly in the world according to one’s affirmed sex and frequently includes physically aligning one’s primary or secondary sex characteristics with their affirmed sex. Though originally labeled male at birth, Ms. Doe lives in accordance with her intrinsic female sex and is in the process of becoming recognized as socially, legally and medically female.

³ You can include this footnote if the person was diagnosed with “gender identity disorder”: Gender dysphoria is the current diagnostic term in the American Psychiatric Association’s 2013 Diagnostic and Statistical Manual of Mental Disorders (5th ed.) (DSM-5). It was previously called “gender identity disorder” in the 4th edition of the DSM. This condition is also known as transsexualism. World Health Organization, International Classification of Diseases (ICD-10).
Although sometimes the phrase “transgender man” or “transgender woman” is helpful, it is generally more useful to describe a person as simply being a man or woman who is transgender. In the current climate of stereotypes and misunderstanding, using “transgender” to modify “man” or “woman” can imply that the person is less male or female than a cisgender individual. Being transgender is one aspect of a person. Just like a person might be gay or Latina or a lawyer, being transgender is an adjective that applies to a person, not that person’s sex.

John is also transgender. Although labeled female at birth, John has a long-standing, innate sense of being male. He has completed steps to be medically, socially and legally recognized as male. His doctor has certified that he is male. He has an appearance, including facial and body hair, traditionally considered male. In social situations, others recognize and interact with him as male, including using male pronouns to refer to him. The State of New York recognizes John as male on his driver’s license and the federal Social Security Administration also recognizes him as male. While John does not have a passport, he is eligible to obtain a passport identifying his sex as male. In short, John is a man.

John has also been diagnosed with gender dysphoria, the medical diagnosis for transgender individuals who experience clinically significant distress as a result of incongruence between their brain sex and their morphological sex.

Describing transition
Avoid presenting the issue as though someone switched from one sex to other. Most transgender people do not feel they have “changed” sexes, but rather came live openly as who they’ve always known themselves to be.

<table>
<thead>
<tr>
<th>Preferred terms</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Labeled male at birth, The sex recorded on her birth certificate was male, a woman who was labeled male at birth</td>
<td>Born a boy, born male</td>
</tr>
<tr>
<td>In the process of (or has completed the process of) becoming recognized as socially, medically and legally male, Is openly male, Has been openly female since 2010, Since coming out as female at work, Publicly female</td>
<td>In the process of transitioning to male, Transitioned from male to female, gender transition, sex change</td>
</tr>
<tr>
<td>Corrected or updated the name and sex on her documents</td>
<td>Changed the name and sex on her documents</td>
</tr>
<tr>
<td>Living according to his/her affirmed sex</td>
<td>Real-life experience</td>
</tr>
<tr>
<td>Reconstructive surgery, plastic surgery</td>
<td>Cosmetic surgery</td>
</tr>
<tr>
<td>Breast reconstruction</td>
<td>Breast augmentation</td>
</tr>
<tr>
<td>Facial reconstruction surgery, Female facial reconstruction, facial gender reassignment</td>
<td>Facial feminization surgery</td>
</tr>
<tr>
<td>Depends on context, but options include</td>
<td>Sex change surgery</td>
</tr>
</tbody>
</table>

transgender-related surgery, corrective surgery (if client likes this term), genital reassignment surgery, sex reassignment surgery, or name the specific procedure (e.g., double mastectomy and male chest reconstruction) if it makes sense

Although labeled female at birth, John has been openly male since 2011. In January 2011, he legally changed his name from a traditionally female name to a traditionally male name. In April 2011 he began testosterone therapy. In October 2012 he underwent a double mastectomy and male chest reconstruction.

Transgender status
Exercise care when describing trans bodies. Avoid cisgender assumptions about what anatomy is “male” or “female” or what comprises “biological sex.” Referring to “biological sex” elides the fact that discrimination is taking place because of someone’s status as transgender, not because of their anatomy. “Biological sex” is comprised of many factors such as hormones, secondary sex characteristics, brain sex, as well as genitals and reproductive organs. For trans people, since the brain is part of physical sex, trans people’s “biological sex” does match their affirmed sex.

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Informed/notified them that she is transgender, notified them of her desire to begin working openly as female, notified them that he intended to be openly male at school</td>
<td>Revealed, disclosed</td>
</tr>
<tr>
<td>Visibly transgender</td>
<td>Does not pass</td>
</tr>
<tr>
<td>Not visibly transgender, consistently read correctly as male, recognized socially as male</td>
<td>Passes as a man</td>
</tr>
<tr>
<td>Cisgender, cis, not transgender, non-transgender</td>
<td>Biological, naturally-born, genetic, real, women-born-women</td>
</tr>
<tr>
<td>Assigned male at birth. (Trans women have female bodies regardless of their anatomy.)</td>
<td>For trans women: male body, male genitals, male-bodied</td>
</tr>
<tr>
<td>Assigned female at birth. (Trans men have male bodies regardless of their anatomy.)</td>
<td>For trans men: female body, female genitals, female-bodied</td>
</tr>
<tr>
<td>Is openly female, describe specifics</td>
<td>Presents as female</td>
</tr>
<tr>
<td>Wears typical female clothing</td>
<td>Dresses in women’s clothing</td>
</tr>
</tbody>
</table>

Because she is visibly transgender, her co-workers were aware of her transgender status.

John is not visibly transgender. He is consistently read correctly as male by others in social interactions. His co-workers did not know he was transgender until John’s supervisor informed everyone of his transgender status without his consent.

Jane informed her supervisor that she is transgender and began coming to work openly as female. She began wearing makeup and typical female clothing to work.

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4 Do not list the person’s old name unless you have to.
**Gender nonconforming vs. Transgender**

Most transgender people are *gender conforming*. When viewed according to her affirmed sex of female, a transgender woman who wears traditionally female clothing is gender conforming. Referring to all transgender women as gender nonconforming plays into the false idea that they are “men in dresses” rather than women who were labeled male at birth.

**Sex-specific institutions, facilities, jobs, and dress codes**

There are five principles to keep in mind when writing about sex-based facilities. For a detailed, model complaint using the concepts below, please see TLDEF’s complaint in *Ellicott v. NYC Dep’t. of Parks and Recreation.*

1) Avoid the phrase “gender identity.” “Gender identity” perpetuates a cis-centric perspective that trans people are *really* the sex they were assigned at birth and simply “identify” otherwise. Making a distinction between how one “identifies” and one’s physical sex does not resolve people’s concerns in contexts where privacy is a perceived issue. We typically don’t think about cis people “identifying” as men or women, they just *are* men or women. In contrast, trans people are painted as men who “identify” as women or women who “identify” as men. That is, people who are *really* still the sex they were assigned at birth who simply *think* they are something else. This fails to capture the lived experiences of trans people who *are* their affirmed sex but live in a society that tells them otherwise.

2) Start from an assumption that your client is their affirmed sex. Traditionally the assumption is that trans people must “prove” that they are their affirmed sex in order to demonstrate that they are “qualified” to use a particular facility. Instead, start with the assumption that a trans man is a man and a trans woman is a woman. Place the burden on the defendant to explain why it has singled out the trans person for differential, discriminatory treatment, such as demanding to see proof of sex or requiring genitals to look a certain way when it doesn’t require that of cisgender people.

3) Emphasize that it is not about a transgender person seeking *inclusion* in a particular facility, but rather an issue of the defendant *excluding* the transgender individual not merely from the sex-specific facility itself, but also the public accommodation or workplace *in general*.

4) Avoid perpetuating the hidden cis-centric assumptions behind the exclusion of trans people from single-sex facilities. Explaining that there are at least three types of sex: social, legal and medical, helps to disrupt the common misconceptions that a) sex = genitals, b) genitals are usually how we separate people by sex, and c) we know what genitals a person has by looking at them. Explain the many factors that comprise “biological” sex besides genitals, and, if relevant, the many different and sometimes conflicting elements of “legal” sex.

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6 Actual defendant quotes: “While New Jersey law prohibits discrimination on the basis of gender identity or expression, it does not expressly hold the same as to transgender status;” “Defendants did not discriminate against Plaintiff by not allowing him the freedom to express his gender identity. Instead, Defendants decided not to hire Plaintiff for the open male urine monitor position on the basis that he could not do the job function that requires a bona fide occupational qualification.”
5) Re-frame the issue in a way that takes into account the reality that trans people exist and live in the world. Use trans people’s experiences as the starting point rather than the “common sense” (i.e., cis-centric) framework that has created the problem in the first place. Ask yourself: Is this standard applied to cis people in this situation? What is the standard applied to cis people? Describe the status quo in a way that reflects reality, not defendants’ assumptions about reality. Make visible the actual rules about who may use a given facility:

On information and belief, individuals self-select which locker room they use. Defendants have not adopted any written rules or regulations or posted any guidelines regarding who may use the men’s or the women’s locker rooms. Defendants do not routinely require individuals to produce any identification, undergo a physical examination, or provide any proof of sex to enter either locker room. Instead, Defendants rely on the sound logic that each individual is the best arbiter of which locker room is appropriate for them.

<table>
<thead>
<tr>
<th>Preferred terms</th>
<th>Terms to avoid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex-based, single-sex, sex-specific</td>
<td>Sex-segregated</td>
</tr>
<tr>
<td>Use the locker room</td>
<td>Access the locker room</td>
</tr>
<tr>
<td>Like any other woman</td>
<td>Like non-transgender women</td>
</tr>
<tr>
<td>Even though she is a transgender woman,</td>
<td>Because she was biologically</td>
</tr>
<tr>
<td>Defendant required her to use the men's</td>
<td>male, she was required to use</td>
</tr>
<tr>
<td>bathroom facilities and share a room with</td>
<td>the men’s bathroom facilities</td>
</tr>
<tr>
<td>men.</td>
<td>and share a room with men.</td>
</tr>
</tbody>
</table>

(Avoid passive voice where it blames the trans person for their anatomy and makes invisible the Defendant’s active, discriminatory choices.)

Questions, comments:

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(347) 612-4312