A GENDER TRANSITION PRIMER:
THE EVOLUTION OF ADA PROTECTIONS AND BENEFITS COVERAGE

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I. BRIEF OVERVIEW OF THE EVOLUTION OF TITLE VII AND ADA ISSUES

The issue of whether Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits discrimination based on gender identity and sexual orientation has become and remains a hotly contested legal issue winding its way through cities, counties, states, agencies and the courts. Since 2015, it has been the EEOC’s position that Title VII’s prohibition on discrimination because of sex includes sexual orientation and gender identity, including transgender individuals.\(^1\) On April 4, 2017, the Seventh Circuit Court of Appeals became the first federal appellate court to agree with the EEOC.\(^2\) Given that contrary rulings have been issued by the Second and Eleventh Circuit Courts of Appeals\(^3\) and Attorney General Jeff Sessions recently announced that the U.S. Department of Justice’s position is that Title VII offers no such protection on its face, most expect the Supreme Court will resolve the issue in the near future.

By contrast, until recently, disability law has played little to no role in the evolution of protections against discrimination for transgender individuals, at least at the federal level. This is almost certainly because the Americans with Disabilities Act of 1990 ("ADA") specifically excludes gender identity disorders from its definition of "disability."\(^4\) This exclusion has been highly controversial, particularly in recent years as the LGBTQ movement has gained political momentum and won several significant legal victories at the local, state, and federal levels. As part of that movement, some have begun to criticize the ADA’s statutory exclusion of gender identity disorders ("GID") as discriminatory and misguided. One legal commentator opined that gender identity disorder is explicitly excluded from the ADA “not because people with GID are not impaired, but rather because, in 1989, several members of Congress believed that people with GID were morally bankrupt, dangerous, and sick.”\(^5\) Regardless, for over 25 years, courts uniformly interpreted the plain language of the ADA as barring disability claims based on gender identity disorders – ostensibly because the statutory language specifically excludes “gender identity disorders not resulting from physical impairments” from the ADA’s coverage.

Until 2013, the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), published by the American Psychiatric Association ("APA"), classified “gender identity disorder” as a mental disorder that required a showing of: (1) strong and persistent cross-gender identification; and (2) persistent discomfort about assigned sex or a sense of inappropriateness in the gender role of that sex.\(^6\) This definition was interpreted as stigmatizing all transgender individuals with a mental disorder. But in 2013, the APA removed gender identity disorder from the DSM-V, and the APA added a new mental disorder labeled “gender dysphoria.” The DSM-V defines gender dysphoria in adolescents and adults as (1) a difference between one’s experienced/expressed gender and assigned gender that is (2) accompanied by significant stress or problems functioning and (3) lasts at least six months and is shown by at least two (2) of the following:

1. A marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex characteristics;
2. A strong desire to be rid of one’s primary and/or secondary sex characteristics;
3. A strong desire for the primary and/or secondary sex characteristics of the other gender;
4. A strong desire to be of the other gender;
5. A strong desire to be treated as the other gender;
6. A strong conviction that one has the typical feelings and reactions of the other gender.7

The removal of gender identity disorder from the DSM and corresponding addition of gender dysphoria narrows the circumstances under which transgender individuals are considered to have a mental disorder. For the psychiatric community, the focus has shifted from identifying as transgender, which is not a mental disorder, to suffering severe distress as a result of identifying as transgender, which is a mental disorder. As discussed below, the focus may be starting to similarly shift in the legislative and judicial community as well.

II. HISTORICAL INTERPRETATION OF THE ADA’S APPLICABILITY (OR LACK THEREOF) TO GENDER IDENTITY DISORDERS

The purpose of the ADA is to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”8 Under the ADA, a person is “disabled” if he or she: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.9 This is an admittedly liberal but not unlimited definition of disability. In fact, there are specific statutory exceptions. The ADA excludes, among other things, “transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.”10 Until a few months ago, that provision was uniformly interpreted as excluding gender identity claims from the ADA’s coverage.

III. CASE STUDY: BLATT V. CABELA’S RETAIL, INC.

In 2006, Cabela’s, a popular sporting goods store, hired Kate Lynn Blatt, a transgender woman, as a merchandise stocker. Shortly after she was hired, Blatt informed Cabela’s that she suffered from gender dysphoria. Cabela’s allegedly responded by prohibiting Blatt from using the female employee restroom and refusing to issue her a female uniform or a name tag with her female name on it. When Cabela’s fired her six months after she was hired, Blatt filed a lawsuit alleging, in part, that Cabela’s had discriminated against her, retaliated against her, and failed to accommodate her in violation of the ADA.

In her complaint, Blatt alleged that she was diagnosed with “Gender Dysphoria, also known as Gender Identity Disorder, a medical condition in which a person’s gender identity does not match his or her anatomical sex at birth.”11 She also alleged that “[s]aid medical condition is a disability within the meaning of the ADA in that it substantially impairs one or more major life activities, including, but not limited to, interacting with others, reproducing, and social and occupational functioning.”12 Cabela’s moved to dismiss Blatt’s ADA discrimination, retaliation, and failure to accommodate claims, arguing that Blatt had failed to state a claim upon which relief could be granted because “[b]ased on the plain language of the ADA and corresponding regulation, Plaintiff is not disabled within the meaning of the ADA.”13
On May 18, 2017, United States District Court Judge Joseph F. Leeson, Jr. of the United States District Court for the Eastern District of Pennsylvania issued a groundbreaking decision denying Cabela’s motion to dismiss and challenging the historical interpretation that the ADA excludes all gender identity claims from its coverage. Judge Leeson held that Blatt had successfully stated a claim upon which relief could be granted by interpreting the ADA’s exclusion of “gender identity disorders” narrowly:

As explained below, there is indeed such an interpretation, namely, one in which the term gender identity disorders is read narrowly to refer to only the condition of identifying with a different gender, not to encompass (and therefore exclude from ADA protection) a condition like Blatt’s gender dysphoria, which goes beyond merely identifying with a different gender and is characterized by clinically significant stress and other impairments that may be disabling.

Judge Leeson rooted his analysis in his finding that gender dysphoria is fundamentally different than gender identity disorder. Unlike gender identity disorder, he reasoned, gender dysphoria is a disabling condition because it limits Blatt’s major life activities of interacting with others, reproducing, and functioning socially and in her occupation. He also explained that Congress purposefully distinguished between excluding certain sexual identities from the ADA’s definition of disability, on the one hand, and not excluding disabling conditions that persons of those sexual identities might suffer from, on the other. In short, Judge Leeson held that gender dysphoria is a disability under the ADA because, unlike gender identity disorder, it can be a disabling condition.

IV. CASE STUDY: SCHAVE-LANE V. AMAZON.COM.KYDC LLC

Even though Judge Leeson’s ruling in Blatt that the ADA’s definition of disability encompasses gender dysphoria was a district court ruling and thus not precedential, it opened the door for future transgender plaintiffs to allege they are covered by the ADA. In fact, they are already doing so. On August 9, 2017, Allegra Schawe-Lane, a transgender woman, sued her ex-employer, Amazon, alleging in part that Amazon violated the ADA by failing to reasonably accommodate her, creating a hostile work environment, and retaliating against her. Schawe-Lane and her husband were shipping workers at Amazon’s Hebron, Kentucky shipping facility. Schawe-Lane alleged that after her colleagues and managers discovered she is transgender, they called her male pronouns, threatened her with physical violence, and looked into her stall when she used the restroom.

Schawe-Lane’s ADA claims, like Blatt’s, stem from her assertion that she suffers from gender dysphoria, which she alleges in her complaint is “the formal diagnosis used by physicians and psychologists to describe people who experience significant distress with the sex they were assigned at birth.” She alleges that her condition is covered by the ADA because “[d]iscrimination against transgender people diagnosed with gender dysphoria is based on disability.” Amazon’s only response to this point has been to deny all of the allegations.
V. BENEFITS-RELATED GUIDANCE AND LITIGATION

Based on litigation and conciliation activity, the EEOC’s stance on benefits for transgender employees appears to be that partial or categorical exclusions for otherwise medically necessary care solely on the basis of sex, including transgender status and gender dysphoria, violates Title VII. No written affirmation of this being an agency-wide stance has been located to date. In early 2016, the consent decree entered in the EEOC v. Deluxe Financial Services, Inc. lawsuit filed in the United States District Court for the District of Minnesota, Case No. 0:15-CV-2646, contained such a resolution clearly demonstrating the EEOC’s stance. The Deluxe case involved allegations of disparate treatment and hostile work environment filed by a transgender employee. None of the allegations in Deluxe pertain in any way to the transgender employee’s healthcare coverage or lack thereof. Nevertheless, the Consent Decree contains the following provision in which Deluxe agreed to provide such coverage moving forward:

As of January 1, 2016, Defendant’s national health benefits plan does not and will not include partial or categorical exclusions for otherwise medically necessary care solely on the basis of sex (including transgender status) and gender dysphoria. For example, if the health benefits plan covers exogenous hormone therapy for nontransgender enrollees who demonstrate medical necessity for treatment, the plan cannot exclude exogenous hormone therapy for transgender enrollees or persons diagnosed with gender dysphoria where medical necessity for treatment is also demonstrated. This plan was available to all of Deluxe’s United States-based employees during open enrollment for 2016 and will be available for all open enrollment periods during the term of this Decree. In addition, Defendant will notify its national plan third party administrator contracted to provide benefits to covered beneficiaries of these non-discrimination requirements. Defendant will also take steps to ensure that employees can meaningfully report health benefits related discrimination on the basis of sex (including transgender status) and gender dysphoria directly to Defendant in the same manner other complaints of sex and disability discrimination are reported.

This language does not appear to prohibit all exclusions, however, the language is not further defined in the consent decree or elsewhere.

Second, on August 22, 2016, the EEOC advanced a plaintiff’s claim against Dignity Health d/b/a Chandler Regional Medical Center by filing a brief, stating that that the plaintiff’s condition, known as “gender dysphoria,” makes the surgery “medically necessary” and that the failure to cover his gender reassignment surgery states a claim for sex discrimination in violation of Title VII. In describing the plaintiff’s claim, the EEOC stated that “employees who are not transgender receive coverage for all medically necessary healthcare.” See Amicus Brief of the Equal Employment Opportunity Commission in Support of Plaintiff and in Opposition to Defendant’s Motion to Dismiss, Robinson v. Dignity Health, No. 16-CV-3035 YGR, 2016 WL 7102832, at *1 (N.D. Cal. Dec. 6, 2016). The EEOC explained that the plaintiff has paid out of pocket for hormone therapy and a double mastectomy after denials by his insurance plan, but he cannot afford other medically necessary treatment, including sex transformation surgery. Further, “[a] transgender individual, by definition, fails to act in the way expected of someone of that
individual’s birth-assigned sex.” The agency added that because the plaintiff “fails to conform to socially-constructed gender expectations of how someone who was assigned the female sex at birth ought to act,” the claim should be treated no differently than any other claim for sex discrimination. Because health insurance benefits are terms or conditions of employment, the plaintiff’s lawsuit states a claim for relief. The case settled in April 2017 for $25,000.

Third, the EEOC determined that a transgender male (the “complainant”), stated a cognizable claim of sex discrimination when he alleged that his Federal Employee Health Benefits insurance plan denied pre-authorization for nipple-areola reconstruction. The EEOC explained that it has long held that since insurance coverage is a fringe benefit of employment, the denial of insurance coverage concerns a term, condition or privilege of employment. Further, the EEOC found that the complainant’s failure to appeal the matter through the Agency’s regulatory process does not preclude him from asserting a viable equal employment opportunity claim. Finally, the Commission noted that the dismissal of the complainant’s disability claim would be improper because, without an investigation, the complainant did not have the opportunity to adduce evidence, and accordingly the record was silent as to whether the complainant’s gender dysphoria resulted from a physical impairment. Darin B. v. Office of Pers. Mgmt., EEOC Appeal No. 0120161068 (Mar. 6, 2017).

However, it is important to note that on October 5, 2017, Attorney General Jeff Sessions reversed the federal government’s guidance issued by Former Attorney General Eric Holder that gender identity is protected as part of Title VII’s prohibition against sex discrimination. Sessions’ memo explains that “Title VII’s prohibition on sex discrimination encompasses discrimination between men and women but does not encompass discrimination based on gender identity per se, including transgender status.” Despite Sessions’ letter, test cases are winding through the courts. See, e.g., Roberts v. Clark Cnty. Sch. Dist., 2016 WL 123320, at $$8-9 (D. Nev. Jan. 11, 2016). As just one example, in September 2016, Rachel Dovel filed a lawsuit against her employer, the Public Library of Cincinnati and Hamilton County and her health insurance provider. After being diagnosed in 2014 with gender dysphoria, Ms. Dovel began undergoing hormone therapy. Ms. Dovel’s complaint alleged that the hormone therapy was covered by the library's health insurance policy with Community Insurance Co. (d/b/a/ Anthem), but the insurer, denied coverage for her sex reassignment surgery despite her health care providers’ determination that the procedure was medically necessary to effectively treat her gender dysphoria. In denying coverage, Anthem claimed that any procedure related to gender reassignment, “regardless of origin or cause,” is expressly excluded under the library's insurance policy. Ms. Dovel filed a lawsuit against Anthem under Title VII and the Affordable Care Act, alleging that the library’s health care policy discriminated against her by denying her equal compensation and terms, conditions and privileges of employment because of her birth sex. See Complaint and Jury Demand, Dovel v. The Public Library of Cincinnati and Hamilton Cnty., et al., Case No. 1:16-cv-955 (S.D. Ohio September 26, 2016). The case settled in February 2017.

In May 2017, the Eighth Circuit Court held that a Minnesota nurse could not pursue gender bias claims under Title VII against her employer Essentia Health over its refusal to cover her son's gender reassignment surgery. The court found that the plaintiff’s complaint on her own behalf over her employer’s refusal to cover treatment for her son does not fall under the protections of Title VII. The court also emphasized that her son is not a plaintiff in the case and that no claim
was brought on his behalf. However, the court remanded the case back to the trial court to
determine whether the merits of the plaintiff’s claims under the Affordable Care Act. The court
found that the plaintiff had demonstrated that she suffered an injury to impart on her standing to
sue because she claimed the insurers’ discriminatory conduct denied her the benefits of her
insurance policy and forced her to pay out of pocket for some of her son’s prescribed medication,
but the trial court failed to address that issue. *Tovar v. Essentia Health*, 857 F.3d 771 (8th Cir.
2017).

VI. ENHANCED PROTECTIONS FOR EMPLOYEES OF FEDERAL
CONTRACTORS

On July 21, 2014, President Obama signed Executive Order 13672 amending Executive Order
11246, which is applicable to federal contractors. Amended Executive Order 11246 prohibits
federal contractors from discriminating in employment on the basis of race, color, religion, sex,
national origin, and now sexual orientation and gender identity. Amended Executive Order
11246 also requires contractors to ensure equal employment opportunity for employees and
applicants without regard to these protected characteristics, and to take affirmative action to
ensure that applicants are employed, and that employees are treated during employment, without
regard to the enumerated bases.

The U.S. Department of Labor’s Office of Federal Contract Compliance Programs’ (“OFCCP”)
Final Rule implementing Executive Order 13672 interprets the nondiscrimination provisions of
Amended Executive Order 11246 consistent with the principles of Title VII. The OFCCP
specifically recognizes *Price Waterhouse* and its sex stereotyping rationale as part of its
Proposed Guidelines described in detail below. The OFCCP states that “[s]ex-based stereotyping
may have even more severe consequences for transgender, lesbian, gay and bisexual applicants
and employees, many of whom report that they have experienced discrimination in the
workplace.” Further, OFCCP Directive 2014-02 indicates that the OFCCP agrees with the
EEOC’s administrative decision in Macy, which held that sex stereotyping a transgender
employee constitutes gender discrimination in violation of Title VII (and therefore Amended
Executive Order 11246).

On June 15, 2016, the OFCCP published final versions of an update to its Sex Discrimination
Guidelines (“Revised Guidelines”), 41 C.F.R. part 60-20. The OFCCP says the Revised
Guidelines reflect Amended Executive Order 11246 and align the Sex Discrimination Guidelines
with modern interpretations of Title VII and EEOC interpretation of the statute. The Revised
Guidelines are an important source of information meant to guide federal contractors on gender
identity issues and shed light on many specific areas of the law. For instance, the Guidelines
provide that transgender employees must be allowed to use the bathroom of the gender with
which they identify, which is completely consistent with the EEOC’s stance, OSHA’s position,
and the suggested best practice.

Paragraph 60-20.2(b)(11) of the Revised Guidelines prohibits taking adverse actions against
transgender individuals because they have undergone, are undergoing, or plan to undergo, sex-
reassignment surgery or other processes designed to facilitate the adoption of a gender or sex
other than the individual’s assigned sex at birth.
Paragraph 60-20.4 of the Revised Guidelines further states that federal contractors must provide equal opportunity with respect to wages and other forms of compensation, including insurance and other fringe benefits, regardless of sex. Contractors are prohibited from paying wages, benefits or other compensation that is the “result in whole or in part of the application of any discriminatory compensation decision . . . .” 41 C.F.R. § 60-20.4(e).

Further, consistent with Macy and Price Waterhouse, Paragraph 60-20.7 explicitly prohibits “employment decisions on the basis of sex-based stereotypes, such as stereotypes about how males and/or females are expected to look, speak, or act.” Finally, Paragraph 60-20.8 amends Executive Order 11246 to clarify that harassment on the basis of sex includes inter alia sexual harassment based on gender identity and harassment that is not sexual in nature but that is because of sex (including harassment based on gender identity).

On January 31, 2017, the Trump administration, through the Office of the Press Secretary, indicated that the protections extended to LGBT persons under Executive Order 13672 would not be repealed. Specifically, the Trump administration stated that Executive Order 13672 would “remain intact.” Moreover, on February 23, 2017, the OFCCP filed its first administrative complaint seeking to enforce Executive Order 11246’s prohibition of sexual orientation discrimination. It is possible, however, for the Trump administration to curb the impact of Executive Order 13672 without repealing or modifying the Order. The OFCCP may alter its enforcement approach or further modify the Revised Guidelines without the President revising or repealing Executive Order 13672.

VII. STATE AND LOCAL DISABILITY LAW

While it remains unclear whether the ADA imposes accommodation obligations on employers, several states and cities have expanded or interpreted their definition of “disability” for disability discrimination purposes to include transgender individuals or individuals suffering from gender dysphoria. In these states, employers have greater accommodation obligations under state law than they do under federal law. State courts and administrative agencies in California, Connecticut, Florida, Illinois, Massachusetts, New Hampshire, New Jersey, New York, and Washington have ruled that their state disability laws prohibit either transgender or gender dysphoria discrimination. Additionally, gender dysphoria is considered a disability under the New York City Human Rights Law (“NYCHRL”).

On the other hand, state disability laws in Idaho, Indiana, Iowa, Louisiana, Nebraska, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, and Virginia specifically exclude either transgender individuals or gender dysphoria from their coverage.
See Baldwin and “What You Should Know About EEOC and the Enforcement Protections for LGBT Workers,” https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm (“the EEOC interprets and enforces Title VII’s prohibition of sex discrimination as forbidding any employment discrimination based on gender identity or sexual orientation.”).


42 U.S.C. § 12101(b)(1).

42 U.S.C. § 12102(1).


Id.


Id. at *4 (“it is fairly possible to interpret the term gender identity disorders narrowly to refer to simply the condition of identifying with a different gender, not to exclude from ADA coverage disabling conditions that persons who identify with a different gender may have – such as Blatt’s gender dysphoria”).

See 135 Cong. Rec. S10765-01, S10767 (daily ed. Sept. 7, 1989) (in response to inquiries about the proposed bill’s coverage of homosexuality, Senator Thomas Harkin, a sponsor of the legislation, clarified that while homosexuality itself would not be a disability under the ADA, that would not prevent a gay person from being covered by the bill if he had a disability).


Id. at ¶ 73, 77, and 81.

Id. at ¶ 50.

Id. at ¶ 54.


NON-DISCRIMINATION AND INCLUSION POLICY FOR TRANSGENDER APPLICANTS AND EMPLOYEES

I. Overview

This document sets forth the policy of the Consumer Financial Protection Bureau (CFPB or Bureau) on workplace non-discrimination and inclusion for transgender employees and applicants for employment to CFPB.

II. Purpose

The purpose of this policy is to reiterate the Bureau’s commitment to an inclusive environment for all employees, to addresses common workplace changes that may occur during a workplace gender transition, and to provide detailed procedures for facilitating a gender transition in the workplace.

III. Policy

The federal government and the CFPB must maintain a workplace free from any discrimination—including harassment—based on race, religion, color, sex (including pregnancy, sexual orientation, transgender status, gender identity or expression, gender non-conformity, or sex stereotyping of any kind), parental status, national origin, age, disability, family medical history or genetic information, political affiliation, military service, or other non-merit based factors. CFPB employees and applicants are also protected against retaliation.

The Bureau’s commitment to equal employment opportunity includes not merely creating a workplace free from discrimination, harassment, or retaliation as required by law, but also ensuring a safe and supportive workplace where all employees and applicants for employment are evaluated solely on their merit. Accordingly, this policy provides basic guidance to help to ensure compliance with federal prohibitions related to employment-related sex discrimination as well as to foster a welcoming and inclusive workplace for all employees regardless of gender identity, including transgender individuals.

An individual’s gender identity and gender transition are inherently personal matters. Some individuals may request workplace assistance and/or changes, whereas others will seek no workplace acknowledgement or changes at all. Accordingly, this policy does not anticipate every workplace situation that might arise, and the needs of an individual employee should be addressed on a case-by-case basis.
IV. Definitions

- **Gender identity** is an individual’s internal sense of being male, female, or some other gender (see “**gender non-binary**” below).

- **Gender expression** refers to how a person represents or expresses gender identity to others—through appearance, dress, mannerisms, speech patterns, social interactions, name, and other characteristics and behaviors.

- **Transgender** is an umbrella term that refers to people whose gender identity and/or expression is different from the sex assigned to them at birth (i.e., the sex listed on an original birth certificate). The term transgender woman typically is used to refer to someone who was assigned the male sex at birth but who identifies as a female. Likewise, the term transgender man typically is used to refer to someone who was assigned the female sex at birth but who identifies as male. A person does not need to undergo any medical procedure to be considered transgender. Further, not all individuals who would fall within this definition of transgender identify as “transgender” per se. For example, an individual assigned the sex of male at birth but who identifies as a woman may simply identify (and want to be known and thought of as) a woman, rather than a “transgender woman.”

- **Gender non-binary** is a term that has sometimes been used for an individual who may not have the gender identity of either a male or female, or who may identify as both male and female, or who may identify their gender as fluid. These individuals may prefer pronouns other than the traditional male and female pronouns. Some people who identify as gender non-binary also identify themselves as “gender queer” or “gender expansive.”

- **Cisgender** is a term used for an individual who internally identifies as the same sex that the individual was assigned at birth.

- **Gender non-conforming** is a broad term that has sometimes been used to refer to people who do not appear, behave, or identify in conformity with gender norms, stereotypes, expectations, or preferences, or whose gender expression does not fit neatly into commonly used categories.

- **Gender transition** is the process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. There is no one set process an individual has to follow to transition. For some individuals it will include changing their name and/or gender on legal documents, and for others it may include medical treatment such as hormones, counseling, and/or surgery. However, surgery or other medical treatments are not necessary for someone to have transitioned to the gender with which the individual identifies.

- **Sexual orientation** is a person’s physical, romantic, or emotional attraction to people of the same or opposite sex (and sometimes to both/all sexes or to no one). Sexual orientation is distinct from gender identity. A person’s gender identity does not have
anything to do with sexual, romantic, or emotional attraction. For example, transgender individuals, just like cisgender individuals, may identify as gay, lesbian, bisexual, asexual, or heterosexual. (See “cisgender” above).

- **LGBT** is an acronym that is often used as an umbrella term referring to lesbian, gay, bisexual, and transgender individuals.

V. **Operational Procedures**

a. **CFPB Point of Contact**

The Director of the Office of Equal Opportunity and Fairness (OEOF) will designate a Transgender Resource Coordinator (Coordinator) to assist with any questions, issues, or concerns that any manager or employee may have at any time regarding this policy or the implementation of this policy. The Coordinator’s contact information will be listed on OEOF’s Wiki Page.

The Coordinator will report directly to the Director of OEOF on these issues. The Coordinator will be a resource to all employees regarding any workplace matters relating to transgender or other gender non-conforming employees. The Coordinator will also facilitate and coordinate all gender transition-related issues, as appropriate, when an employee indicates a need for workplace adjustments or assistance regarding a planned or ongoing transition. Managers and supervisors may also be required to assist the Coordinator with handling workplace issues and executing personnel actions.

The Coordinator will develop and provide, or arrange to provide, periodic training for all employees on this Policy and its requirements, and may consult or provide input on other related or relevant Bureau training materials to ensure content is appropriate and inclusive. In implementing this Policy, the Coordinator may consult with other program offices or employee resource groups, as appropriate.

If at any time an employee has concerns with respect to planning or implementing a transition, or with any other issue related to this policy, the employee should feel free to bring those concerns directly to management, the Coordinator, the Director of OEOF, or the Office of Civil Rights.

As with discrimination on any other prohibited basis, an applicant or employee who believes discrimination based on transgender status or gender identity has occurred may raise the matter directly to OCR or to the U.S. Office of Special Counsel, within any applicable timeframes as described in the Equal Employment Opportunity (EEO) and Non-Discrimination Policy. For situations involving possible harassment, employees also should consult and follow CFPB’s Procedures Related to Harassment and Inappropriate Conduct.
b. Non-Discrimination and Inclusion

Title VII of the Civil Rights Act of 1964, the Civil Service Reform Act of 1978, Executive Order 11478 (as amended), and the Bureau’s Equal Employment Opportunity (EEO) and Non-Discrimination Policy prohibit discrimination and harassment on the basis of sex. All applicants and employees, including those who openly identify as lesbian, gay, bisexual, and/or transgender, are protected from sex discrimination. The U.S. Equal Employment Opportunity Commission has ruled that gender-based stereotypes, perceptions, or comfort level of coworkers and supervisors should not interfere with the ability of any employee to work free from discrimination or harassment. This means employees may express their gender identity and their sexual orientation without fear of adverse consequences or mistreatment. Discrimination based on transgender status or gender identity, or because of a gender transition, is unlawful.

Managers and supervisors must lead by example and communicate clearly with employees about what behavior is lawful and appropriate to avoid all forms of discrimination and harassment, and about the consequences for unlawful behavior. If managers or supervisors become aware of derogatory remarks or demeaning behavior toward an employee relating to gender identity or transgender status, they must take appropriate steps to immediately and effectively stop these actions, as they would with respect to potential harassment on any other protected basis. All employees should become familiar with and follow CFPB’s Procedures Related to Harassment and Inappropriate Conduct.

The Bureau’s Coordinator is available to discuss any related concerns with management and/or any employee.

c. Privacy and Confidentiality

Some employees may discuss their gender identity or transgender status openly; others may choose to keep that information private. Like any other personal information, if an employee shares information regarding gender identity or transgender status, the information should be treated with appropriate sensitivity and kept confidential. Medical information received about individual employees is protected under the Privacy Act (5 U.S.C. § 552a). Gossiping about an individual’s gender identity, transgender status, or gender-related transition is inappropriate and can be harmful and possibly even illegal.

If any Bureau staff member learns that a transgender employee is going through, has gone through, or is contemplating a gender transition, the information should be treated with the same sensitivity and confidentiality as would be accorded information about any other employee who is going through a significant life experience. This will leave the employee free to decide when, with whom, and how much to share information that the employee may consider private.

Critically, disclosure by management of information about an employee’s transgender status may result in disclosure of confidential information prohibited under laws such as the Rehabilitation Act of 1973 and the Privacy Act. This type of personal information can only be shared with the transgender employee’s consent, as needed to implement changes requested by the transgender employee, or as otherwise requested by the transgender employee.
d. Obtaining a Change of Name and/or Gender Listed in Bureau Records

Transgender employees may wish to change their official personnel records and/or other records to reflect the gender with which they identify.

Many records can be changed to reflect a person’s preferred name without the employee submitting documentation to support the change (e.g., staff directories, intranet/wiki profiles, business cards, email addresses, and door name plates). When a transgender employee requests that the Bureau change these types of records to reflect a change in name and/or gender, the Bureau will make every reasonable attempt to do so within approximately sixty (60) days, or less, as feasible depending on particular circumstances.

Certain types of records (e.g., those pertaining to payroll, retirement accounts, official personnel records, or official government identification tags) may require documentation before the employee’s name or gender can be changed in the records. If the record change requires official documentation as evidence of the name and/or gender change, the Bureau will make every reasonable attempt to make the change within approximately sixty (60) days, or less, as feasible depending on particular circumstances, and upon receipt of documentation as set forth in the Office of Personnel Management’s “The Guide to Personnel Recordkeeping,” Chapter 4, How to Reconstruct a Personnel Folder Due to a Change in Gender Identity. Managers or supervisors receiving such a request should refer the matter to the Coordinator for further processing.

The Coordinator will work with the Office of Human Capital (OHC) to ensure the actions necessary to change official records are taken. Employees involved in the record-changing process will at all times ensure that steps are taken to maintain confidentiality during the transition process. If the transgender employee is uncomfortable with an employee’s involvement in the record changing process, this information should be relayed to the Coordinator as soon as possible. Individuals responsible for record changes will receive training on this policy and any other training the Director of OEOF or the Director’s designee deems necessary.

The Coordinator, in coordination with OHC, the Office of Technology and Innovation (TI), the Office of the Chief Financial Officer (OCFO), and any other applicable office, will maintain a checklist of all records that need to be changed during a gender transition, to help ensure that a record will not be missed. These include personnel records, health care records, email addresses, identification tags, door name plates, legal research or other software application login information, computer system login names, etc. (See Attachment B – List of Examples of Workplace Records That Might Be Subject to Change as a Result of a Gender Transition).

OHC will work with insurance carriers and other benefits providers to ensure that the Bureau’s records reflect the employee’s correct name and gender. During this process employees in transition who already have federal insurance benefits will be allowed to continue their participation in their insurance plan, and new employees must be allowed to elect participation based on the gender with which they identify.

If a transgender employee requests changes to records, the Coordinator will act as a liaison
between the employee and the individuals in the various offices responsible for changing the
records. The Coordinator will follow up with the appropriate individuals to ensure that all
records are changed in a timely manner.

The employee has an obligation to contact the Coordinator to request changes, provide the
necessary documentation, and cooperate with follow-up information requests by the Coordinator.
For the Coordinator to effectuate any requested records changes, the employee will also be
required to complete any necessary forms required for record changes. However, it will be the
Coordinator’s role to determine the appropriate individuals to contact for record changes and to
identify in consultation with the employee the records that need to be changed.

Consistent with OPM guidance, for records requiring evidence to support a record change the
Coordinator will request that the employee submit acceptable evidence of gender identity, if
available, and require evidence of the new name, if changed. State and local laws vary as to
whether a driver’s license or other State form of identification documents may be issued to
reflect a gender change. Possession of a valid passport in the employee’s new name and gender
is per se acceptable evidence of the new name and gender, and no further evidence need be
provided.

If evidence of change of gender in the identity documents is not obtainable because of State or
local requirements or any other reason, the employee’s official personnel records may still be
reconstructed with the employee’s new name and gender to reflect a change in gender identity
based on a medical certification, as per OPM’s Recordkeeping Guidance.

e. Use of Preferred Name and Pronoun

A court-ordered name or gender change is not required for employees to obtain a change in the
name used at work due to transgender status or gender identity. All employees should be
addressed by and referred to with their preferred name and pronoun, both verbally and in writing.

Although employees may inadvertently make mistakes in name and pronoun usage after a
person’s preferred name or pronouns change, persistent intentional misuse of an employee’s
name or pronoun could constitute sex-based harassment in violation of federal laws and
executive orders and the CFPB Procedures Related to Harassment and Inappropriate Conduct, as

3 In June 2015, OPM ordered that federal health insurance benefit providers may not have a
blanket exclusion for transgender related coverage.
well as this Policy. Therefore, when supervisors and managers are aware of an employee’s preferred name and pronoun, they should ensure that employees are addressed and referred to appropriately.

As a best practice, if an employee is in good faith unsure of the correct pronoun (or name) to use in referring to an individual, the employee may politely ask the individual what pronoun (or name) the person prefers. If an employee knows the individual’s preferred first name, but is unsure which pronoun to use at first, the employee could also use the individual’s first name.

**f. Ensuring Access to Appropriate Facilities, Including Restrooms and Locker Rooms**

In accordance with rulings by the EEOC and OSC, as well as guidance from the OPM and the Department of Labor’s Occupational Safety and Health Administration (OSHA), individuals must be allowed to use restrooms consistent with their gender identity. In practice, this means that a transgender woman must be permitted to use the women’s restroom once she begins working as a woman, and a transgender man must be permitted to use the men’s restroom once he begins working as a man.

CFPB will not require a transgender employee to have undergone any particular medical procedure, or provide proof that the employee underwent any procedure, to have access to a bathroom designated for use by a particular gender that corresponds with the employee’s gender identity.

If a unisex or single-stall restroom is available for general employee use in a Bureau facility, along with restrooms designated for a single sex, any employee may use that unisex or single-stall restroom when it is available. While use of a single stall restroom might be incorporated into a transition plan at the employee’s request, the Bureau will never require that an employee use such a restroom instead of the common restroom designated for a single sex.

If a CFPB facility also has locker rooms designated for use by a particular gender, the CFPB will allow employees access to locker rooms corresponding to their gender identity. For example, a transgender woman will be permitted to use the women’s locker room once she begins working as a woman, and a transgender man will be permitted to use the men’s locker room once he begins working as a man. CFPB will not require a transgender employee to have undergone any particular medical procedure, or provide proof that the employee underwent any procedure, to have access to a locker room designated for use by a particular gender that corresponds with the employee’s gender identity.

Any employee who has a need or desire for additional privacy, for any reason, may request the personal use of an already available private room or the use of a curtain in the locker room, where feasible. Any alternative arrangement for an employee will be provided in a way that allows the employee to keep the reason for the request for increased privacy, such as an employee’s transgender status, confidential.
Employees requesting or requiring help with these issues may contact the Coordinator for assistance.

g. **Dress and Grooming**

CFPB’s [Dress Code Policy](#) does not restrict employees’ clothing, hair style, or other aspects of appearance on the basis of gender or gender stereotypes. Any requirements or expectations imposed regarding appropriate attire will not be applied based on gender. All employees have a right to comply with CFPB’s dress code in a manner consistent with their gender identity or gender expression. Additionally, CFPB’s dress code does not prohibit an individual from maintaining a gender-neutral appearance.

h. **Job Assignments**

To the extent that the CFPB may have sex-segregated job assignments (e.g., requiring security personnel to conduct gender-specific pat-down searches), the Bureau will classify and assign transgender employees in a manner consistent with their gender identity—not their sex assigned at birth.

Bureau officials will not take sex, sexual orientation, gender expression, gender identity, gender identity-related medical history, or the non-conformity with gender stereotypes of a person into consideration when assigning job tasks to be performed in another country or that involve officials from another country, even if the assignment is in a country or involves officials from a country that is perceived to have biases toward women or LGBT individuals.

i. **Medical Leave**

Employees receiving medical treatment as part of a gender transition may use sick or other leave available under applicable regulations and policies, just as with medical treatment sought for any other reason. Similarly, if the employee wants to request the use of leave through the Family and Medical Leave Act (FMLA) for leave related to transition or for leave related to the transition of family members, the employee must follow the Bureau’s procedures to request FMLA leave and cannot do so through this policy. See CFPB’s [Sick Leave Policy](#) and [Annual Leave Policy](#) for more detailed information on requesting leave.

If a transgender employee wants to request a disability-related reasonable accommodation under the Rehabilitation Act, such as medically-related leave, the employee must request the accommodation through the CFPB’s [Reasonable Accommodation Policy](#) and cannot request an accommodation through this policy. This policy makes no legal determination of whether any transgender-related medical procedures or conditions meet the Rehabilitation Act’s definition of a disability.
j. Hiring Process and Promotion Selection Decisions

An individual is not obligated to affirmatively disclose gender identity or any gender transition-related information during the hiring or promotion process. Hiring or promotion documents (e.g., application materials) relating to an individual who previously transitioned may indicate a name and/or gender that does not correspond with information gathered during background or reference checks. If this occurs, a hiring official should not automatically assume that the inconsistency is a mistake or the result of deception or intentional misrepresentation. Rather, if a hiring official has any questions or concerns about the inconsistency of names or genders on hiring documentation, the official should be directed to OHC, which will handle obtaining any needed clarification from the applicant. At no time should a hiring official ask an applicant about the applicant’s gender identity nor should an applicant’s gender identity or expression play any role in considering the applicant for a position, or any other employment action.

k. Training

This Policy will be incorporated into any new employee training provided. The Bureau will also incorporate information regarding transgender employees in general Bureau-wide EEO or diversity communications and/or training, as appropriate. In addition, the Bureau may determine that specialized training is necessary in particular offices or Bureau-wide.

When a transgender employee notifies the Bureau of a planned transition, the Coordinator and the employee’s management or supervisory officials should determine whether training would be beneficial for management, supervisors, and co-workers in the employee’s office. Consideration should be given to the transgender employee’s perception of the work environment and desire for confidentiality. As an example, training could include cultural competency education and/or training on sex-based discrimination and harassment under federal laws and executive orders. Such training should be presented as close to the date of the employee’s workplace transition as possible, with the date and proposed content of the training shared with the employee in advance.

l. Data Collection on Sexual Orientation and Gender Identity

Consistent with applicable federal laws and regulations, CFPB may collect data on applicants’ and employees’ sexual orientation and gender identity when collecting other demographic information, such as race, sex, national origin, and disability status. Providing information about sexual orientation and gender identity is voluntary, and an individual’s refusal to do so will not subject an applicant or employee to adverse treatment of any kind. If an employee or applicant declines to provide this information, the Bureau will not attempt to identify the applicants’ or employee’s sexual orientation or gender identity through visual observation or any other method. Information about applicants’ and employees’ sexual orientation and gender identity will be kept confidential and used only in ways that are in accordance with federal laws, regulations, executives orders, and other policies.
m. Workplace Transition Process

Bureau employees should treat transitioning employees in a respectful manner. Intentionally preventing, delaying, or otherwise impeding reasonable workplace changes related to an employee’s gender transition will not be permitted or tolerated. If a transitioning employee requests workplace changes requiring management assistance, the Coordinator and other necessary and appropriate staff will work with each transitioning employee individually to ensure a successful workplace transition, and to support management, staff, and the transitioning employee in addressing any questions or concerns that arise.

Because individual circumstances may differ, the Coordinator will strive to ensure the Bureau’s process is fluid and adaptable. The following outlines an example of what a transition process may look like:

1. Initiating the Workplace Transition Process

Transgender employees who wish to request changes in the workplace (e.g., name and pronoun usage, records, bathrooms or locker rooms, a hardship transfer) associated with a transition must request the changes either through their management or supervisory officials or through the Coordinator. If the transitioning employee notifies a supervisor or manager first of the impending transition or related request, the supervisor or manager should promptly contact the Coordinator, after first obtaining permission from the employee, to directly assist the transgender employee with all aspects of the workplace transition and any requested changes in the workplace.

2. Developing a Transition Plan

If a transitioning employee seeks workplace changes that require employer assistance, the Coordinator, in consultation with the transitioning employee, will develop an individualized transition plan that addresses the workplace changes and assistance the employee seeks and is tailored to the employee’s circumstances and comfort level.

Workplace changes or a workplace transition plan may not be necessary or appropriate in all circumstances. For example, some transgender employees may not request any workplace changes, or may only seek discrete changes that need not be disclosed to other employees. Additionally, if a newly hired or transferred employee presents as the gender identified with when the employee first meets co-workers and management and supervisory officials, a gender transition plan and changes may not be requested at all. In this situation, the employee may either disclose the information or not, in accordance with the employee’s preference.

Examples of items that the workplace transition plan might address, subject to what the employee seeks, include:

- **The workplace transition date.** This is the date on which the transgender employee will begin to present full-time in the workplace consistent with the employee’s gender identity. The date chosen is entirely within the discretion of the transgender employee.
An employee is not required to give the Bureau advance notice of when the employee will begin to present full time in the gender with which the employee identifies, and the employee may not know for certain. At the same time, transitioning employees are encouraged to consider that giving management and coworkers advance notice may help accomplish any workplace changes the employee requests as part of the transition process.

- **The employee’s preferred name and pronoun, and the date that the employee would like to begin being called by the preferred name and pronoun.** This date ordinarily should correspond with the date the transgender employee will begin to present full time in the workplace consistent with the employee’s gender identity.

- **The date the employee will begin using the bathroom and locker room (if available) of the gender with which the employee identifies.** This date ordinarily should correspond with the date the transgender employee will begin to present full time in the workplace consistent with the employee’s gender identity.

- **Information regarding record changes.** This may include: the required documentation the employee may need to provide for requested record changes; the date by which the employee should provide the documentation; the planned date by which the Bureau will change all employee personnel records to reflect the correct name, pronoun, and gender of the employee; and a date for a follow-up to ensure that all record changes have occurred. The Bureau will coordinate record changes to coincide with the official transition date or soon after so as not to reveal sensitive information prior to the transgender employee’s transition. As set forth above in Section VII, the employee should expect approximately 60 days between the date the employee initially informed the Coordinator of the transition and when the records will be changed.

- **Informing others about the transition.** The employee may or may not want others to know about the transition. The transitioning employee has discretion over whether, how, and when to inform others, such as managers or supervisors, coworkers and external parties (i.e., individuals who do not work for the CFPB but who may interact with the transgender employee on a regular basis for work purposes). The employee may choose to tell others about the transition personally, or may ask the Coordinator or other Bureau management or supervisory official to help communicate transition-related information. Similarly, the employee may choose to tell managers, supervisors, coworkers, and/or external parties individually, or as part of a group. If the employee decides that a manager or supervisor should inform others about the transition, the Coordinator should be present or readily available to help answer any questions. The manager or supervisor should only provide the information that the employee wishes to be shared, and should share it in the manner the employee requests. See Attachment C – Management Guide for Communicating a Workplace Gender Transition.

- **Leave or Accommodations.** The Coordinator will refer the employee to the information in this Policy regarding leave requests.
• **Training.** The transition plan should also address whether training will be provided to coworkers and managers and supervisors, and the date by which the training will be provided.

To help ensure a smooth workplace transition, the Coordinator and the transitioning employee should use a workplace transition checklist to develop and/or implement the transition plan. This may include, for example, the items listed in Attachment A – Sample Workplace Gender Transition Plan. The checklist will not contain any personal information about medical treatment.

3. **Implementing the Plan**

The Coordinator will ensure that the Bureau timely implements the transition plan in accordance with this Policy.

An employee should feel free to raise concerns about planning or implementing a transition, or about any other aspects of this policy, directly to the employee’s supervisor, the Coordinator, or the Director of OEOF.

4. **Follow Up**

The Coordinator will follow up with management and supervisory officials and the transgender employee to ensure that any workplace changes were completed, that all records were changed, that there are no further questions, and to ensure there is no current workplace conflict, issue, harassment, or any other form of discrimination or inappropriate conduct.

If the Coordinator receives information about potential discrimination or harassment, the Coordinator may contact the Director of the Office of Civil Rights and/or OHC, consistent with CFPB’s Procedures Related to Harassment and Inappropriate Conduct. However, it is the individual’s obligation to timely raise any potential EEO issue with an EEO counselor in accordance with 29 C.F.R. Part 1614 and as described in CFPB’s Equal Employment Opportunity (EEO) and Non-Discrimination Policy.

VI. **Roles and Responsibilities**

**Office of Equal Opportunity and Fairness (OEOF)** - The Director of OEOF will designate a Transgender Resource Coordinator (Coordinator) to assist with any questions, issues, or concerns that any manager or employee may have at any time regarding this policy or the implementation of this policy. OEOF will ensure that the Coordinator’s contact information will be listed on OEOF’s Wiki Page. OEOF will work with the Coordinator to ensure the Coordinator has sufficient resources to carry out his or her duties as described by this policy.

**Office of Civil Rights (OCR)** – OCR and its staff will keep apprised of new developments in this area of law, will work with the Coordinator to develop and provide training to Bureau
employees, will help with the dissemination of relevant information to Bureau employees about this policy, and will serve as a resource for the Coordinator. OCR will continue to notify Bureau employees that any employee who believes they were subjected to discrimination or harassment because they are lesbian, gay, bisexual, or transgender may file a complaint through the federal sector EEO process.

**Office of Human Capital (OHC)** – OHC and its staff will change or work with the Records team or other internal and external stakeholders as necessary to change employees’ records to reflect the correct name and the gender with which employees identify as soon as possible, but no later than within 60 days of when it received notification and/or required documentation, as described in this policy. OHC will arrange for training with OEOF for its own staff on this policy, and it will work with OEOF to incorporate this policy into its manager and supervisor training curriculum.

**Facilities** – Facilities will collaborate with OEOF to ensure there are no barriers to equal access to restrooms or locker rooms for any Bureau employees, applicants, or visitors.

**The Transgender Resource Coordinator** - The Coordinator will be a resource to all employees regarding any workplace matters relating to transgender or other gender non-conforming employees. The Coordinator will facilitate and coordinate all gender transition-related issues, as appropriate, when an employee indicates a need for workplace adjustments or assistance regarding a planned or ongoing transition. The Coordinator will develop and provide periodic training for all employees on this Policy and its requirements. The Coordinator will stay up-to-date on transgender related issues in the workplace and any legal developments in this area of law.

**Managers and Supervisors** – Managers and supervisors must make sure that there is no discrimination or harassment in the workplace because of an employee’s sexual orientation or gender identity. Managers and supervisors must set an example for all employees by following this policy. If a manager or supervisor is notified that an employee requests workplace changes due to a gender transition, the manager or supervisor should request permission from the employee to contact the Coordinator to assist with the workplace changes.

**The Transitioning Employee** – An employee who transitions to the gender with which they identify is under no obligation to inform the Agency about their gender transition unless they request workplace changes. If a workplace change requires documentation, as described in this policy and per the requirements of the U.S. Office of Personnel Management, the employee must provide the required documentation as soon as possible.

**VI. Legal Authorities and References**

**U.S. Equal Employment Opportunity Commission**

- *Macy v. Dep’t of Justice*, EEOC Appeal No. 0120120821 (Apr. 20, 2012) (decision by the Commission holding that intentional discrimination against a transgender individual because that person is transgender is, by definition, discrimination based on
sex and therefore violates Title VII).

- *Lusardi v. Dep’t of Army*, EEOC Appeal No. 0120133395 (Mar. 27, 2015) (decision by Commission holding that Agency restrictions on transgender female's ability to use a common female restroom facility constituted disparate treatment on the basis of sex and that the restroom restrictions combined with hostile remarks, including intentional pronoun misuse, created a hostile work environment on the basis of sex).

- *Jameson v. U.S. Postal Service*, EEOC Appeal No. 0120130992 (May 21, 2013) (intentional misuse of a transgender employee's new name and pronoun may cause harm to the employee, and may constitute sex based discrimination and/or harassment).

- *Complainant v. Dep’t of Veterans Affairs*, EEOC Appeal No. 0120133123 (Apr. 16, 2014) (a sex discrimination allegation involving the failure to revise agency records pursuant to changes in gender identity stated a valid Title VII claim).

U.S. Office of Special Counsel


U.S. Department of Labor


U.S. Office of Personnel Management


VII. Additional Resources

The following additional resources may also be helpful with respect to addressing CFPB workplace issues relating to transgender status or gender identity in the Bureau’s workplace:

- CFPB’s [Equal Employment Opportunity (EEO) and Non-Discrimination Policy](#)

- CFPB’s Office of Civil Rights at phone 202-435-9EEO(9336), TTY at 202-435-9742, email CFPB_EEO@cfpb.gov

- CFPB’s [Procedures Related to Harassment and Inappropriate Conduct](#)
• Employee Assistance Program at 1-800-457-9808 (TTY: 888-262-7848).


• EEOC Fact Sheet: Processing Complaints of Discrimination by Lesbian, Gay, Bisexual, and Transgender (LGBT) Federal Employees

• U.S. Office of Special Counsel at 1-800-872-9855.

• OPM-EEOC-OSC-MSPB Guide: Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment

• What You Should Know About EEOC and the Enforcement Protections for LGBT Workers

VIII. Revision History

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<td>Richard Cordray, Director</td>
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IX. Director Signature and Date

[Signature]
Richard Cordray, Director

5/11/16
Date

X. Effective and Expiration Dates

This policy shall be effective as of the date of its approval, as indicated in the section above. This policy shall remain in effect until the Director of the Bureau revises or rescinds it.

XI. Appendices

Appendix A – Sample Workplace Gender Transition Plan
Appendix B – List of Official and Unofficial Workplace Records to be Changed
Appendix C – Management Guide for Communicating a Workplace Gender Transition
Appendix A – Sample Workplace Gender Transition Plan

The following is a list of common workplace changes that may be helpful to the transitioning employee, the Transgender Resource Coordinator, and supervisors and managers when planning a workplace transition. Every transition is different, and some employees may want none of these changes, all of these changes, some of these changes, or additional changes not listed here. This list is not meant to be all inclusive or exclusive, as transition plans are always adaptable based on the employee’s needs and wants.

Date of initial notification to Bureau of transition: ___________________________

Date of official workplace transition (the day that the employee will begin presenting full-time as the gender the individual identifies with) ___________________________

The gender the individual identifies with: ___________________________

Preferred Name: ___________________________

Preferred Pronoun: ___________________________

The date to begin usage of the new name and/or pronoun (this date ordinarily should correspond with the date of official workplace transition): ___________________________

The date the employee will begin using the bathroom and/or locker room of the gender he or she identifies with (this date ordinarily corresponds with the date of official workplace transition): ___________________________

The names of the management official(s) in the employee’s direct line of supervision that that will be told: ___________________________

The date the employee’s management official(s) will be told: ___________________________

☐ Will the employee’s coworkers be told? ___________________________

The date the employee’s coworkers will be told (usually the same date as the date of official workplace transition): ___________________________

Who will tell the employee’s coworkers of the transition: ___________________________

Will training be provided to coworkers? ___________________________

If training will be provided, the date of the training: ___________________________
Other details regarding the training (e.g., who is conducting it, etc.):
______________________________________________________________

Do external parties need to be told of a new name and/or pronoun?
______________________________________________________________

If external parties will be told, who will tell them and when will they be told of the new name/pronoun?
______________________________________________________________

The employee is required to provide the following documentation for record changes:
______________________________________________________________

______________________________________________________________

The date by which the employee will provide the documentation: __________________________

The date by which the Bureau will ensure that all records will be changed to reflect the employee’s accurate name, pronoun, and gender, subject to any approval and processing necessary by OPM: __________________________

The employee has been advised that if a disability-related reasonable accommodation is necessary, the employee must request the accommodation through the Bureau’s reasonable accommodation process and cannot request the accommodation through this Transition Plan or under the Bureau’s Transgender Policy. Similarly, if the employee wishes to request FLMA leave, the employee will request leave through the Bureau’s FMLA leave request process, and not through this Transition Plan or the Bureau’s Transgender Policy.

Employee’s Signature: __________________________

Date: __________________________

Transgender Resource Coordinator’s Signature: __________________________

Date: __________________________
Appendix B – List of Official and Unofficial Workplace Records To Be Changed

The following are common records that may be changed during a workplace transition. Not all of these records will apply to every individual. The Transgender Resource Coordinator will update his or her copy of the Checklist and will be the keeper of the official Checklist. The Transgender Resource Coordinator will act as a liaison between the employee and the individuals in the various offices responsible for changing the records.

<table>
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<td>□ CSRS Designation of Beneficiary/ SF2808</td>
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<td>□ TSP Designation of Beneficiary: TSP-3</td>
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<td>□ FEDVIP: Dental and Vision</td>
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<td>FLTCIP: Long Term Care</td>
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<td>Office of Workers’ Compensation Program (OWCP)</td>
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<tr>
<td>Federal Reserve Thrift Plan – Beneficiary Designation</td>
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**Office of the Chief Financial Officer**

- Federal Employee ID & PIV Credentials
- Concur: Government Travel Access
- Government Travel Credit Card
- Headquarters Building Proxy Access Card
- Headquarters Transit Benefits

**Office of Technology and Innovation**

- Login name for all computer software systems, including initial login, Outlook, EPP, eOPF, webTA, HR Connect, inCompass, TLMS, and other system access
- Access to Blackberry and RSA Token
- Change to email address, contact list, voicemail
- Change in name and information listed on the Wiki

**Local Office**

- Request for Personnel Action SF-52
- Notification of Personnel Action SF-50
- Local Building Access Card
- Local Transit Benefits
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Appendix C – Management Guide for Communicating a Workplace Gender Transition

The following summary guidance may assist managers or supervisors when asked by a transgender employee to inform coworkers of transition-related workplace changes. This is intended to only provide general guidance, and the announcement should be individualized for each person, office, and situation. Points that management could communicate include, for example:

- The employee will be transitioning to the gender the employee identifies with, and will begin presenting full time in accordance with that gender identity;
- The new name and pronoun of the employee that will be used (which should be used correctly throughout the meeting);
- That management values the employee’s importance to the Bureau and expects employees to treat the individual in a respectful and professional manner, and expects employees to treat the individual in a respectful and professional manner;
- The applicability of the CFPB Procedures Related to Harassment and Inappropriate Conduct, and the CFPB Equal Employment Opportunity (EEO) and Non-Discrimination Policy, as well as this Transgender Policy;
- The expectation that the transition will not change the workplace and that everything should go on as it did previously;
- Provide employees with the name and contact information of the Transgender Resource Coordinator if they have any questions; and
- If the employee has explicitly indicated that questions or discussions regarding the transition are welcome, management may tell coworkers that they can discuss the transition with the employee as long as the discussion is respectful in tone and appropriate in content.
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The First Day of the Employee’s Official Workplace Transition .......................................................... 8
An LASD Guide: Transgender & Gender Non-Conforming Employees

Purpose

The Los Angeles County Sheriff’s Department does not tolerate discrimination on the basis of sex, race, color, ancestry, religion, national origin, age (40 and over), disability, sexual orientation, gender identity, gender expression marital status, medical condition, or any other characteristics protected by federal or state law. This is designed to create a safe and productive workplace environment for all employees.

This publication sets forth guidelines to address the needs of transgender and gender non-conforming employees and clarifies how the law should be implemented in situations where questions may arise about how to protect the legal rights or safety of all employees. These guidelines do not anticipate every situation that might occur with respect to transgender or gender non-conforming employees, and the needs of each employee must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety and comfort of transgender or gender non-conforming employees while maximizing the employee’s workplace integration and minimizing stigmatization of the employee.

Definitions

The definitions provided here are not intended to label employees, but rather to assist in understanding this policy and LASD’s legal obligations. Employees may or may not use these terms to describe themselves.

- **Gender Identity**: An individual’s internal sense of being male or female, or something not defined by traditional definitions of male or female. Gender identity is generally determined in the early years of an individual’s life and, if different from the individual’s physical gender, may result in increasing psychological and emotional discomfort and pain. The way an individual expresses his or her gender identity is frequently called “gender expression,” and may or may not conform to social stereotypes associated with a particular gender.

- **Gender Expression**: An individual’s external and social characteristics and behaviors (such as appearance, dress, mannerisms, speech, and social interactions) that may be perceived as masculine or feminine.

- **Transgender**: Individuals with a gender identity that is different from the sex assigned to them at birth. Someone who was assigned the male sex at birth but who identifies as female is a transgender woman. Likewise, a person assigned the female sex at birth but who identifies as male is a transgender man. Some individuals who would fit this definition of transgender do not identify themselves as such, and identify simply as men and women, consistent with their gender identity. The guidance discussed in this policy applies whether or not a particular individual self-identifies as transgender.

- **Gender Non-Conforming**: Individuals who display gender traits which are not generally associated with their birth-assigned sex. Gender non-conforming individuals may or may not identify as male, female, or transgender. Also known as gender-variant, gender atypical or androgynous.

- **Transition**: The process of changing one’s gender from the sex assigned at birth to one’s gender identity. These individuals often seek some form of medical treatment such as counseling, hormone therapy, electrolysis, and reassignment surgery. Some individuals, however, will not pursue some (or any) forms of medical treatment. Transitioning may also include the emotional task of telling
one’s family, friends, and co-workers, and the process of changing one’s name and gender on legal documents and identification.

- **Sexual Orientation**: A person’s physical and emotional attraction to people of the same and/or other gender. Straight, gay, and bisexual are some ways to describe sexual orientation. It is important to note that sexual orientation is distinct from gender identity and expression. Transgender people can be straight, gay, lesbian, or bisexual, just like non-transgender people.

- **LGBT**: A common abbreviation that stands for Lesbian, Gay, Bisexual, and Transgender.

**Privacy**

An employee’s transition should be treated with as much sensitivity and confidentiality as any other employee who is going through a significant life experience. Transgender employees have the right to discuss their gender identity or expression openly, or to keep that information private. The transgender employee decides when, with whom, and how much to share their private information. If a transgender employee does choose to share information about their own gender transition, they are reminded that they are still subject to the Department’s Policy of Equality, which protects all employees from discussions about sexual and personal medical matters while at work.

Operations staff, personnel staff, and co-workers should not disclose information that may reveal an employee’s transgender status or gender non-conforming presentation to others. Information about an employee’s transgender status (such as the sex they were assigned at birth) can constitute confidential medical information under privacy laws like HIPAA. That kind of personal or confidential information may only be shared with the transgender employee’s consent and with co-workers who truly need to know to do their jobs. If the employee is in the process of transitioning from one gender to another, guidance for preparing co-workers and providing workplace sensitivity training is presented in the section below titled *Transitioning on the Job*.

**Official Records**

Transgender employees have the right to be addressed by the name and pronoun corresponding to the employee’s gender identity. The Los Angeles County Sheriff’s Department will change an employee’s official record to reflect a change in name and/or gender upon presentation of a current California Driver’s License or California Identification Card in the employee’s new name and/or gender. Data Systems Bureau should be contacted to change the employee’s name in the Outlook Address Book database.

If a new or transitioning employee has questions about Department records, identification cards, transitioning on the job, or other transgender-related issues, the employee should contact the Bureau of Labor Relations and Compliance (BOLRAC) Operations staff.

**Names / Pronouns**

An employee has the right to be addressed by the name and pronoun that correspond to the employee’s gender identity, upon request. A court-ordered name or gender change is not required. The intentional or persistent refusal to respect an employee’s gender identity (for example, intentionally referring to the employee by a name or pronoun that does not correspond to the employee’s gender identity) can constitute harassment and is a violation of the Policy of Equality. If you are unsure what name or pronoun a transitioning co-worker might prefer, you can politely ask them how they would like to be addressed.
Supervisors and managers shall use the name and pronoun requested by the employee, regardless of the supervisor’s perception of the employee’s gender expression. Supervisors and managers should also monitor the workplace regularly to make sure co-workers are using the employee’s desired name and pronoun.

**Restroom Accessibility**

Employees shall have access to restrooms corresponding to their gender identity. Any employee who has a need or desire for increased privacy, regardless of the underlying reason, will be provided access to a single-stall or private restroom, when available. However, no employee shall be required to use such a restroom. All employees have a right to safe and appropriate restroom facilities, including the right to use a restroom that corresponds to the employee’s gender identity, regardless of the employee’s sex assigned at birth. Transgender women must be permitted to use the women’s restroom and transgender men must be permitted to use the men’s restroom. The decision about which restroom to use should be left to the transgender employee to determine the most appropriate and comfortable option for them.

Some employees – transgender or non-transgender – may desire additional privacy. Where possible, the effected unit should make available a unisex private or single-stall restroom that can be used by any employee who has a need for increased privacy, regardless of the reason. If a single-stall restroom is not available, another option might be to install an “Occupied / Unoccupied” sign and an interior slide lock on the door of a multi-stall restroom, which could be used by any employee desiring additional privacy. Under no circumstances may the Department require an employee to use facilities that are unsanitary, potentially unsafe for the employee, or located at an unreasonable distance from the employee’s work station.

**Locker Room Accessibility**

All employees have the right to use the locker room that corresponds to their gender identity. Transitioning employees are not required to provide proof or have undergone any particular medical procedure (including gender reassignment surgery) in order to have access to facilities designated for use by a particular gender. Any employee who has a need or desire for increased privacy, regardless of the underlying reason, may be provided with a reasonable alternative changing area, such as the use of a private room. An employee’s schedule may also be slightly adjusted so that they may use the locker room that corresponds to their gender identity before or after other employees. Any alternative arrangement for a transgender employee will be provided in a way that allows the employee to keep their transgender status confidential, according to their needs.

**Dress Codes**

The Department does not have dress codes that restrict employees’ clothing or appearance on the basis of gender. When a transgender employee begins their transition, they may begin wearing clothing and hair consistent with their gender identity. Transgender and gender non-conforming employees must still comply with Department dress codes and grooming standards in a manner consistent with their gender identity or gender expression (MPP 3-01/050.80).

**Transitioning on the Job**

Transgender employees who transition on the job can expect the support of Department management and Personnel staff. The Bureau of Labor Relations and Compliance (BOLRAC) will work with each transitioning employee individually to ensure a successful workplace transition.
Any employee of the Los Angeles County Sheriff’s Department, sworn or professional staff, who desires to transition from one gender to another, is strongly encouraged to contact the Bureau of Labor Relations and Compliance (BOLRAC). This initial contact may also be requested by the employee’s unit commander or the Operations staff with the consent of the transitioning employee. BOLRAC will assign a specific contact/liaison who will work with the transgender employee to assist them in making the transition as smooth as possible. BOLRAC will assist the employee with name changes on Department paperwork and computer systems, will work as a liaison with the employee’s unit of assignment to assist with changes in restroom and/or locker room accessibility if requested, and can help to coordinate educational training for the employee’s co-workers prior to the transition date. The liaison should periodically contact the transitioning employee to determine if the employee has any concerns.

The transitioning employee’s Unit Commander should also assign a supervisor (minimum rank of sergeant) from his/her staff to act as the employee’s primary point of contact regarding transition issues while at work on a day-to-day basis. This supervisor should be educated on basic transgender terminology and transition issues, and should be a support to the transitioning employee.

A guide to developing a Workplace Transition Plan is attached at the end of this document.

**Sex-Segregated Job Assignments**

For sex-segregated job assignments, transgender employees will be classified and assigned in a manner consistent with their gender identity, not their sex assigned at birth.

**Discrimination / Harassment**

It is unlawful and violates County and Department policy to discriminate in any way against an employee because of the employee’s actual or perceived gender identity (MPP 3-01/121.00 – 122.25). Additionally it also is unlawful and contrary to this policy to retaliate against any person objecting to, or supporting enforcement of legal protections against, gender identity discrimination in employment.

The Los Angeles County Sheriff’s Department is committed to creating a safe work environment for all employees, including transgender and gender non-conforming employees. Any incident of discrimination, harassment, or violence based on gender identity or gender expression will be given immediate and effective attention, including, but not limited to, investigating the incident, taking appropriate corrective action, and providing employees and staff with applicable resources.

**Additional Resources**

- Employee Support Services (213) 378-3500  http://intranet.lasd.sheriff.sdn/intranet/ESS/Index.htm
- LASD Intake Specialist Unit (323) 890-5371 – for questions regarding discrimination or harassment
- LASD Department Resource for LGBT Issues – Lieutenant Donald Mueller DMMuelle@lasd.org
- Transgender Community of Police & Sheriffs (TCOPS)  http://www.tcops-international.org/
- Transgender Law Center  http://transgenderlawcenter.org/
- Gay Peace Officers Association of Southern California  http://www.gpoasc.org/
An LASD Guide: Transgender & Gender Non-Conforming Employees

Unit of Assignment Transition Plan Guide

This sample UOA Transition Plan addresses some of the processes that may occur during an employee transition. This sample plan should be customized to fit your unit’s staffing structure and procedures, and should be modified individually with each transitioning employee to meet their individual needs.

Once a tentative UOA Transition Plan has been agreed on, the BOLRAC liaison, the UOA assigned supervisor, and the transitioning employee must work together to see that each portion of the plan is addressed. It is important to remember that this plan is flexible and is completely up to the transitioning employee. Every employee is different and the individual needs of one employee may be different than the needs of another.

Before the UOA Transition Begins

1. If the employee’s Unit Commander has been contacted first, the UC should immediately notify BOLRAC so that a liaison may be assigned to the transitioning employee with the employee’s consent. If BOLRAC is contacted first, BOLRAC personnel should notify the employee’s Unit Commander as soon as possible.

2. An initial meeting should be set up with the transitioning employee, their assigned BOLRAC liaison, and with a supervisor from their unit of assignment who has been assigned as their primary point of contact. A representative from the local LGBT law enforcement employee support group may also be a helpful addition (Contact Lieutenant Donald Mueller for further info). Copies of the Department’s transgender-related policies and the availability of transition-related support through Employee Support Services should be made available to the employee.

3. Next, if the transitioning employee’s immediate supervisor was not the first point of contact, a meeting between the BOLRAC liaison and the employee’s supervisor(s) should be scheduled, with the employee’s consent, to ensure the supervisor knows of the employee’s planned transition. The transitioning employee may or may not want to attend this meeting. Note: Management above the transitioning employee’s supervisor should be made aware of the employee’s planned transition so that supervisors and management can express their support when the employee’s transition is made known to the employee’s co-workers.

4. Create the UOA Transition Plan. Make sure it addresses all of the following areas:

   a) The date when the transition will officially and formally occur. This means the date that the employee will change their gender expression, name, and pronouns. The transitioning employee may or may not choose to begin using the restroom and locker room associated with their gender identity on this same date.

   b) Decide how, and in what format, the transitioning employee’s co-workers should be made aware of the employee’s transition. It is up to the transitioning employee to decide if they would like to make some co-workers aware of their transition on a one-on-one basis before it is officially announced.

   c) Decide what, if any, training will be given to co-workers. Training may be provided before, during or after transition.

   d) Determine what updates should be made to the transitioning employee’s records and email address, and when these updates will be made.

   e) Determine dates of any leave, if needed, for pre-scheduled medical procedures.
The Day the Transition Will Be Made Known to Co-Workers

1. Have a mandatory briefing/meeting that includes the employee’s co-workers, the employee’s supervisors, and the employee’s Unit Commander and/or Operations staff. The assigned BOLRAC liaison and support personnel from Employee Support Services should also attend. It is up to the employee whether they feel comfortable attending or would prefer not to be there.

2. Preferably, the Unit Commander should announce the transition, along with any other high level management who can attend, showing solidarity with the transitioning employee. The speaking supervisor should:
   
a) Emphasize the transitioning employee’s importance within the Department and management’s complete support of the employee’s transition.

b) Review the Department’s Policy of Equality.

c) Indicate that the transitioning employee will be presenting themselves in accordance with their gender identity and this should be respected. The supervisor should also advise co-workers about the transitioning employee’s new name and preferred pronoun which must be used from this point forward.

d) Address bathroom concerns

e) Be an example by using the transitioning employee’s new name and pronoun.

f) Make a point that the Sheriff is an inclusive employer and disrespectful behaviors will not be tolerated.

g) Solicit any questions. Refer questions to the BOLRAC or ESS representatives if appropriate.

h) If training is going to occur, the date should be announced at this meeting. If possible, the training should occur before the date of the employee’s official workplace transition.

The First Day of the Employee’s Official Workplace Transition

The transitioning employee’s supervisor should be clear that all elements are in place, in the same way the supervisor would for a new hire or transferred employee. These elements include:

1. Making sure the transitioning employee has a new Department ID, if required.

2. Making sure the employee has an updated locker assignment if necessary

3. Ensuring all work documents and timesheets have the appropriate name and gender.

4. Continue monitoring the workplace to ensure co-workers are using the employee’s new name and pronoun, and continuing to monitor the workplace to stop inappropriate behaviors or comments.

For additional directions or information, feel free to contact LGBT resource Lieutenant Donald Mueller (dmmuelle@lasd.org) or the Operations staff at the Bureau of Labor Relations and Compliance.