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## STATE OF NEW JERSEY Workplace Gender Transition Guidelines

### I. Purpose of the Guidelines

The State of New Jersey does not discriminate on the basis of sex, gender, sexual orientation, gender identity, gender expression, or other protected characteristics. These guidelines are designed to create a safe and productive workplace environment for all employees in the State workplace and to supplement the *New Jersey State Policy Prohibiting Discrimination in the Workplace* ("State Policy").

These guidelines are intended to address some of the needs of transitioning, transgender, gender non-conforming, and gender non-binary employees in the State workplace, and answer questions that may arise about how to protect the rights of such employees. Additionally, it provides guidance for employee's co-workers, managers, and others in the workplace on these topics. These guidelines do not anticipate every situation that may occur with respect to employees who are transitioning, and the needs of each employee must be assessed on a case-by-case basis. In all cases, the goals are to ensure the safety, comfort, and health of such employees, to maximize workplace integration, and to minimize stigmatization.

### **Discrimination/Harassment**

1. It is unlawful and violates the State Policy, the New Jersey Law Against Discrimination, and federal Civil Rights Law to discriminate in any way (including, but not limited to, failure to hire, failure to promote, or unlawful termination) against an employee because of their actual or perceived gender identity or expression, including because they are transitioning. Additionally, it is also unlawful and contrary to the State Policy to retaliate against persons who speak up when they see instances of discrimination against employees who are transitioning/who have transitioned. It is also unlawful to discriminate or retaliate against persons who support enforcement of legal protections against discrimination in employment, including gender identity or gender expression discrimination.
2. Any incident of discrimination, harassment, or violence based on gender identity or expression that is reported to an appropriate authority within the employing agency will be given reasonably prompt attention by the appropriate authority. The employing agency's authority may assess whether an investigation is warranted and, if so, investigate the incident, and recommend or take appropriate corrective action.

## **II. Definition of Terms**<sup>1</sup>

The definitions provided are not intended to label employees but rather to assist in understanding this policy and the legal obligations of employers. Employees may or may not use these terms to describe themselves and/or may not subscribe to the particular definitions below. A best practice is to refer to people with the term(s) they use to self-identify and/or request to be used when referring to them.

**Cisgender** means a person whose gender assigned at birth (sometimes referred to as sex assigned at birth) matches their gender identity. For instance, if a person was assigned female at birth, and self identifies as a woman or girl, that person is cisgender.

**Gay** is an umbrella term that means a person who is emotionally, spiritually, physically, and/or sexually attracted to those of the same gender.

**Gender** means a person's sex-related or gender-related characteristics, including one's gender identity, and has the same legal meaning as "sex."

**Gender Assigned at Birth** means the gender that someone was thought to be at birth, typically recorded on their original birth certificate. The gender someone was assigned at birth may or may not match their gender identity.

**Gender Binary** means a social system that constructs gender according to two discrete and opposing categories — male or female.

**Gender Expression** means a person's gender-related appearance and behavior, whether or not stereotypically associated with the person's assigned gender at birth. It is the manner in which a person represents or expresses their gender to others, such as through their behavior, clothing, hairstyles, activities, voice or mannerisms.

**Gender Identity** means a person's internal, deeply held knowledge of their own gender, regardless of the gender they were assigned at birth. All people have a gender identity, not just transgender people.

**Gender Nonconforming** means a person whose gender expression does not conform to traditional gender expectations. Not all gender nonconforming people identify as transgender.

**Gender Transition** means a process during which a person begins to live according to their gender identity, rather than the gender they were thought to be at birth. Gender transition looks different for every person. Possible steps in a gender transition may or may not include changing one's clothing, appearance, and name, and in some cases, changing identification documents or undergoing medical treatments. The steps each person takes depends on their individual needs and access to resources.

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<sup>1</sup> **Source:** New Jersey Transgender Equality Task Force Report and Recommendations - 2019

[https://d3n8a8pro7vhmx.cloudfront.net/gardenstateequality/pages/1683/attachments/original/1574265601/Transgender\\_Equality\\_Task\\_Force\\_Final.pdf](https://d3n8a8pro7vhmx.cloudfront.net/gardenstateequality/pages/1683/attachments/original/1574265601/Transgender_Equality_Task_Force_Final.pdf), accessed on January 21, 2022.

**Intersex** means a person whose sex characteristics may not fit medical definitions of male and female. These characteristics may include, but are not necessarily limited to, internal reproductive organs, external genitalia, and sex chromosomes.

**Lesbian** means a person who identifies as a woman or girl and is emotionally, spiritually, physically, and/or sexually attracted primarily to members of the same gender.

**LGBTQI** is an acronym that stands for lesbian, gay, bisexual, transgender, questioning and intersex. The Q may also stand for queer.

**LGBTQI Harassment** means conduct that is critical or mocking of a person's perceived or actual sexual orientation, gender identity, or gender expression that may include, but is not limited to: name-calling; disrespectful gestures; jokes or comments; inappropriate touching; bullying; shunning or isolation; or attempting to change a person's sexual orientation, gender identity, or gender expression.

**Non-Binary** is a term that is often used by people whose gender is not exclusively male or female, including those who identify with a gender other than male or female, with more than one gender, or with no gender at all. People whose gender is neither male nor female may use other terms to describe themselves, such as gender fluid, agender, bigender, or gender expansive.

**Queer** is a term that, while once pejorative, is increasingly used by members of the LGBTQI community as a broad umbrella under which sexual and gender minorities may identify.

**Questioning** is a term some people use when they are in the process of exploring their sexual orientation or gender identity.

**Sexual Orientation** means a person's romantic or sexual attraction to people of another and/or the same gender. Common terms used to describe sexual orientation include, but are not limited to, straight, lesbian, gay, bisexual, and asexual. Sexual orientation and gender identity are different: gender identity refers to one's internal knowledge of their gender, while sexual orientation refers to whom one is attracted to.

**Transgender** is an umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the gender they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc. This term is an adjective. Using this term as a verb (i.e., transgendered) or noun (i.e., transgenders) is offensive and should be avoided.

**Transgender Man** is a term for a transgender person who identifies as a man.

**Transgender Woman** is a term for a transgender person who identifies as a woman.

**Transition** see **Gender Transition**.

### **III. Transitioning**

Employees who transition while in their agency can expect the support of management and Human Resources ("HR") staff. HR will work with each transitioning employee individually to ensure a successful workplace transition.

## A. Transitioning Employee

At the time of the employee's transition, it is important for employees within the agency/department to model behavior that is supportive and affirming of the employee's gender. One primary means for modeling the appropriate behavior is to use the correct gender pronoun and title when addressing the employee. The correct use of pronouns and titles should be incorporated in all communications whether oral, written, informal, or formal.

Additionally, as these guidelines supplement the New Jersey State Policy Prohibiting Discrimination in the Workplace, please note the following: employees who believe that they have been subjected to discrimination/harassment or have witnessed others being subjected to such discrimination/harassment should contact their agency's Office of EEO/AA as listed in their Model Procedures for Internal Complaints Alleging Discrimination in the Workplace or call the Division of EEO/AA hotline number at (833) 691-0404 for information regarding filing a complaint. Employees may have additional recourse pursuant to the additional resources provided in IV. Compliance, Legal Authority and Resources at the end of this document.

## B. Supervisors and Management

1. Before the Workplace Transition Begins:<sup>2</sup>
  - a. Where appropriate and practical, the transitioning employee may advise their direct supervisor of their upcoming transition. If the transitioning employee is uncomfortable discussing the matter with their supervisor, the employee can speak directly with their agency's HR administrator.
  - b. Supervisors should refer the transitioning employee to HR to review applicable agency policies with them.
  - c. If the transitioning employee's supervisor was not the first point of contact, a meeting between the transitioning employee and their supervisor – and others, if desired by the transitioning employee – should be scheduled to ensure the supervisor knows of the employee's planned transition. *Note:* With the transitioning employee's knowledge, management beyond the transitioning employee's supervisor should be made aware of the employee's planned transition in order to provide support when the employee's transition is made known to the employee's work team. The HR unit should coordinate this process.
  - d. The transitioning employee, the employee's immediate supervisor, and HR will meet to discuss all the individuals who will need to be included in the workplace transition plan. This discussion should also address appropriate notification of the transition to outside parties with whom the employee interacts (e.g., contractors, personnel at other agencies, other third parties) which should be

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<sup>2</sup> Please note that this information is presented as a guide only. Specific agency/employee needs, considerations, and administrative processes, etc. may vary. A resource for this model plan includes, <https://transgenderlawcenter.org/wp-content/uploads/2013/12/model-workplace-employment-policy-Updated.pdf>, pages 8-9.

determined through consultation between HR, manager(s), and fellow employees.

All members of this transition team should familiarize themselves with the agency's applicable policies, including confidentiality policies, and other relevant resources that provide educational information about transitioning and transgender people. Keep in mind that while a timeframe would be helpful for when each person needs to become involved in the employee's transition process, it may not be necessary for all members of the transition team to be involved in all aspects of the planning. Also recognize that certain stages of the workplace transition process will require more time than others. Attempt to set a timeline that predicts how long each step will reasonably take.

## 2. Workplace Transition Meeting

Where appropriate, practical, and based on the employee's preference, have a work team transition meeting that includes the transitioning employee (if they wish to attend), their supervisor, their co-workers, and appropriate managerial leadership. It is important to have this meeting in person, if at all possible.<sup>3</sup> If the employee thinks it would be helpful, reference materials about transgender issues can be provided by HR at this meeting.

The head of the employee's work team should announce the transition, along with any other higher-level management who are there to show support for the transitioning employee. The supervisor directing the meeting must:

- a. Emphasize management's support of the employee's transition.
- b. Review the agency's relevant nondiscrimination policies.
- c. Indicate that the transitioning employee will be presenting themselves in accordance with their gender identity and this should be respected. If applicable, the manager should also advise co-workers about the transitioning employee's new name, pronouns, and honorific title.
- d. Announce that the transitioning employee's new name pronouns, and honorific title must be used in all communication – written and oral, formal and informal.
- e. Emphasize that the transition will not change the workplace and that everything should go on as it did previously.
- f. Solicit any questions and refer any questions that the manager cannot answer to HR.
- g. If training will be made available, the date should be announced at this meeting. If possible, the training should occur before the date of the employee's official workplace transition.

## 3. Workplace Transition Plan

A documented Workplace Transition Plan coordinated by HR should address the date when the transition will officially and formally occur, i.e., the date that the employing State agency will formally recognize the transitioning employee's gender identity and begin using their preferred gender expression, name, title, and pronoun. If the

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<sup>3</sup> Consistent with COVID protocols and policies as applicable.

transitioning employee is not already using the restroom facilities most consistent with their gender identity, the transitioning employee may choose to begin using the restroom most consistent with their gender identity on this date as well. See Workplace Policies – Restroom Access.

The Plan should also address the following areas:

- a. Decide when, 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.
- b. Decide what, if any, training<sup>4</sup> will be given to supervisors and co-workers as appropriate.
- c. Which updates should be made to the transitioning employee's records, and when they will be made (HR).
- d. Employees receiving treatment as part of their transition should be made aware that they may use sick or other appropriate leave under applicable regulations. The Plan should address the dates of any leave that may be needed for pre-scheduled medical procedures (HR).

### **C. Workplace Policies**

**Appearance Standards.** No State agency should maintain a dress code or appearance standard that limits or defines appropriate attire or appearance on the basis of gender. Subject to such gender-neutral departmental dress codes or appearance standards (where applicable), transitioning employees have the right to dress and present themselves in a manner consistent with their gender identity or gender expression.

**Restroom Access.** Supervisors and management have an obligation to provide transitioning individuals with the same level of restroom access available to non-transgender individuals.

Some State agencies make available a gender inclusive restroom, i.e., a gender neutral, unisex single-user or alternative-configured, non-gendered restroom. The existence of a gender inclusive restroom does not preclude the transgender or non-transgender employee from using the gendered restroom facilities that are most consistent with their gender identity. Gender inclusive restroom facilities may benefit transgender, transitioning, gender non-conforming or non-binary people, as well as other individuals, including people with disabilities who have other-gender caregivers, or people with opposite gendered children who are uncomfortable using gendered restroom facilities.

**Pronoun and Name Changes.** Upon notification of a transitioning employee's intent to use a new name, and consistent with the individual's Workplace Transition Plan, employees should be addressed by their chosen name, pronouns, and honorific titles (e.g., Mr., Ms., Mx.) that correspond to their gender identity, to the extent they have communicated their preference(s). A court-ordered name or gender change, doctor's note, or medical document 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

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<sup>4</sup> The NJ Civil Service Commission's Center for Learning and Improving Performance (CLIP) is available to assist agencies in identifying and developing appropriate training and/or training resources.

correspond to the employee's gender identity) is not acceptable.

**Name Changes on Official Records, Licenses, and Registrations.** The agency/department ("agency") will change an employee's records and other official identifying information (e.g., nameplates, business cards, organization charts, phone directories) to reflect a change in name or gender upon request from the employee; however, certain types of records, like those relating to payroll and health benefit information, may require a legal name change before the person's name can be changed. Such requests will be treated equally regardless of the reason for the request. A name/pronoun change does not require a medical procedure.

Upon the request of the employee, the employing State agency will make an effort to update with reasonable promptness any identifying photographs in agency-issued credentials and agency-controlled communications to reflect the transitioning employee's gender identity and expression.

Employees with questions about the gender reflected in their personnel records, agency-issued credentials, or other official documents should contact their agency's HR unit.

The Human Resources administrator should ensure that all name changes and photographs are updated in advance where possible so that they can be initiated on the transition date. This includes email addresses. Make sure to keep in mind that name changes within certain processes could take longer than in others. This needs to be accounted for in the Transition Plan.

**Rights to Privacy.** Every employee may, at their sole discretion, either openly acknowledge or keep confidential information about their gender identity, including without limitation whether they are cis-gender, transgender, gender non-conforming, non-binary, or any other manifestation of gender identity or expression. The employee has the right to decide whether, when, with whom, and how much to share such information.

Management, human resources staff, or co-workers should not disclose information about an employee's transgender, non-binary, or gender non-conforming status to others without the employee's consent and, even then, only on a need-to-know basis. See Workplace Transition Plan.

#### **IV. Compliance, Legal Authority, and Resources**

##### *A. Appointing Authority.*

Any questions or concerns regarding compliance with this policy should be addressed to:

**(Insert contact information for the department/agency Diversity Officer or other person designated by the agency head).**

##### *B. New Jersey State Policy Prohibiting Discrimination in the Workplace* N.J. Civil Service Commission, Division of Equal Employment Opportunity / Affirmative <https://www.nj.gov/csc/about/divisions/eoo/index.html>

The Division of Equal Employment Opportunity/Affirmative Action was created by law to ensure equal employment opportunities for all New Jersey State employees and prospective employees. The Division also serves to prevent State employees, prospective State employees, and persons doing business with the State, from being subjected to discrimination and/or harassment.

The Division of EEO/AA is charged with ensuring that all employees and applicants for employment with the State of New Jersey work in an environment free from all forms of employment discrimination in accordance with the State of New Jersey's Policy Prohibiting Discrimination in the Workplace. The Division of EEO/AA is also charged with insuring that all State Departments and Agencies comply with the applicable law, policies and procedures

N.J.A.C. § 4A: 7-1, et seq. – Equal Employment Opportunity and Affirmative Action

N.J.A.C. § 4A:7-3.1 State Policy Prohibiting Discrimination in the Workplace (State Policy)

N.J.A.C. § 4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

C. *N.J. Division on Civil Rights*

The New Jersey Division on Civil Rights (DCR) is the state agency charged with enforcing New Jersey's civil rights laws, including the New Jersey Law Against Discrimination (LAD), the New Jersey Family Leave Act (NJFLA), and the Fair Chance in Housing Act (FCHA) effective January 1, 2022. The mission of DCR is to protect the people of New Jersey from discrimination and bias-based harassment in employment, housing, and public accommodations.

*About The Division:* <https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/division-on-civil-rights-about/>  
<https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/>

<https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/know-the-law/>

N.J.S.A. 10:5-1, et seq. – New Jersey Law Against Discrimination

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

Responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, transgender status, and sexual orientation), national origin, age (40 or older), disability or genetic information.

*Title VII of the Civil Rights Act of 1964:* <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>

*EEOC Guidance - Protections Against Employment Discrimination Based on Sexual*



Orientation or Gender Identity: <https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender>

*EEOC Guidance - Sexual Orientation and Gender Identity (SOGI) Discrimination:*  
<https://www.eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination>