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Gender Identity and Expression Procedure - PR-0212.A

Purpose

The Oregon Employment Department fosters fairness, equity, and inclusion to maintain a workplace environment where everyone is treated with respect and dignity regardless of race, color, national origin, religion, sex, sexual orientation, gender identity, marital status, age, veteran status, disability, or status as a victim of domestic violence, harassment, sexual assault, or stalking.

This procedure describes how the agency treats all people in a manner consistent with their gender identity or expression while conducting official business and clarifies how applicable law and policy are implemented in order to protect legal rights and safety related to gender identity and expression in employment and public accommodations. This procedure does not anticipate every situation or request that may occur, and the needs of each individual should be assessed on a case-by-case basis. In all cases, the goal is to provide an inclusive and respectful environment for agency customers, employees, contractors, subcontractors, vendors, and interns of all gender identities, which will benefit the agency by increasing productivity and quality of services to all Oregonians.

Application

This procedure applies across all agency services and work sites. It addresses how agency representatives (including its employees, contractors, subcontractors, vendors, and interns) conduct official agency business with customers, partners, employees, contractors, subcontractors, vendors, and interns.

Definitions

The following is a partial list of common terms that individuals may use to describe themselves and is intended to assist in understanding this procedure and the legal obligations of the agency. Agency customers, employees, contractors, subcontractors, vendors, and interns should respect the identity of each individual as expressed by that individual, and avoid using these terms to label any individual who has not used these terms to describe themselves.

- A. Gender identity: a person's internal sense of being a man, woman, or another gender. A person's gender identity cannot be assumed based on their appearance, voice, sexual orientation, or other characteristics.
- B. Gender expression: how a person presents themselves on the outside, such as through behavior, clothing, hairstyle, voice, or body characteristics, which may be associated with societal expectations for

being a man, woman, or another gender. These expectations vary across cultures and change over time. Characteristics such as sexual orientation and gender identity cannot be assumed based on an individual's gender expression.

- C. Sex assigned at birth: in Oregon, it is the assignment of individuals to a sex category by medical practitioners or parents at birth, which is typically based on the appearance of external genitalia. Assigned sex at birth is then recorded on the birth certificate as male, female, undetermined (used in cases where the sex cannot be determined due to a medical condition), or X for individuals who are not exclusively male or female. Parents can make the decision to have their child's sex be X on the original birth record.
- D. X: prior to July 13, 2017, state IDs have only given two options for gender marker: "M" (male) or "F" (female). Going forward, the Oregon Department of Motor Vehicles provides a third, gender-neutral marker: "X" for "unspecified." This provides a new option for people with different or no gender identities, or those who simply prefer to not list their gender for privacy or other reasons.
- E. Cisgender: a term people may use to describe themselves when their gender identity corresponds to the sex they were assigned at birth. "Cis" is often used as shorthand for cisgender.
- F. Transgender: a broad term people may use to describe themselves when their gender identity or gender expression is different from the cultural expectations based on the sex they were assigned at birth. "Trans" is often used as shorthand for transgender.
 - 1. Transgender man: a man who was assigned female at birth.
 - 2. Transgender woman: a woman who was assigned male at birth.
 - 3. "Transgender" is correctly used as an adjective, hence "transgender people," is acceptable, but "transgenders" or "transgendered" is often viewed as disrespectful.
 - 4. Some people described by this definition may use other words or may identify simply as a man or woman.
- G. Gender non-conforming: a term people may use to describe themselves when their gender identity or expression does not conform to traditional or societal expectations. These expectations vary across cultures and change over time.
- H. Gender nonbinary; gender expansive; genderqueer: terms people may use to describe themselves when they identify as neither a man or woman, as a combination of a man or woman, outside the categories of a man or woman, or completely different from these terms.
- I. Preferred or adopted name: non-birth name that a person uses in self-reference.
 - 1. This may or may not be name currently found on the person's government-issued identification.
- J. Pronoun: a word that is used instead of a noun to refer to the person or people speaking or being spoken about. Note that "they" can be used to refer to one person, either by that person's choice or if the person's pronouns are not known. In addition, a person's gender expression or outward appearance is not necessarily an indicator of how they would like to be addressed or what pronouns they use. Examples of pronouns include she, her, he, his, they, their, ze, and zir:
 - 1. Ex. *She* arrived at 8 a.m.
 - 2. Ex. *He* gave *their* manual to *her*.
 - 3. Ex. "There is someone on the phone for you." "What do *they* want?"
 - 4. Ex. "Fatima called for you. *They* said *they'll* meet you in 10 minutes."
 - 5. Ex. Ashe is here. *Ze* is ready for *zir* intake now.

- K. Transition or gender affirmation: a process for a person to live according to their gender identity if it does not correspond to the sex they were assigned at birth. There are many different ways to transition, as every person is unique. For some, it is a complex process that takes place over a long period of time, while for others it is a one- or two-step process that happens more quickly. This process may include (but is not limited to) any of the following actions:
1. Changing their clothing, appearance, and/or usage of gender-specific facilities.
 2. Requesting that others use a different pronoun or preferred name when referring to them.
 - a. People in transition may change their pronoun more than once, such as changing to "they" for several months before changing their pronoun to "he" or "she."
 3. Changing their name and/or gender marker on government-issued identification, such as their driver's license or passport.
 - a. Note that changing names on government-issued identification is a multi-step process, and therefore a person can have different names on different forms of government-issued identification at the same time.
 4. Accessing medical treatment such as hormone therapy, surgery, counseling, etc.

Procedures

The agency will treat all customers, employees, contractors, subcontractors, vendors, and interns in a manner consistent with their gender identity or gender expression, regardless of the sex assigned at birth, to the fullest extent possible.

A. Discrimination and Harassment

1. The Employment Department is committed to creating a safe environment for transgender employees and customers. Any incident of discrimination, harassment, or violence based on a protected class, including actual or perceived gender identity or expression, will be given immediate and effective attention, including but not limited to investigating the incident and taking immediate corrective action up to and including dismissal. Complaints may be submitted verbally or in writing to any manager, the Office of Human Resources, the Director, or the Department of Administrative Services Chief Human Resources Office.
2. It is unlawful and violates Employment Department policy to discriminate in employment in any way, including but not limited to failure to hire, promote, or train; termination; or harassment because of an individual's membership in a protected class, including actual or perceived gender identity or expression. In addition, it is unlawful and a violation of agency policy to retaliate against any person who objects to discrimination or who supports enforcement of the anti-discrimination policy.
 - a. Ex. A hiring panel interviews an applicant who mentions during the interview that they are transgender. During the hiring panel's discussion after the interview, one panelist expresses concern that agency customers may not want to interact with a transgender employee. The hiring manager correctly reminds the panelist that failure to hire based on a protected class is an example of employment discrimination, and in addition, an employment decision based on the discriminatory preferences of customers or coworkers is itself discriminatory.
3. In accordance with ORS 659A.403, agency employees are prohibited from unlawful discrimination or harassment in the agency's delivery of services, programs, facilities, privileges, or any other type of public accommodation for protected classes, including gender identity and expression.

B. Names and Pronouns

1. For everyday interactions and usage, all agency customers, employees, contractors, subcontractors, vendors, and interns have the right to be addressed by the name and pronoun that corresponds to their gender identity and are encouraged to let agency representatives know how they would like to be addressed. A court order or other government-issued identification is not required. The intentional or persistent refusal to respect an individual's gender identity may be considered harassment in violation of State of Oregon policy.
 - a. A person's gender expression, name on government-issued identification, voice, or outward appearance is not necessarily an indicator of how they would like to be addressed.
 - b. Any employee, contractor, subcontractor, vendor, or intern who is unsure how to address a coworker or customer may politely ask, "How would you like to be addressed?"
 1. Ex. "I have a quick question to make sure that we're addressing you the best way. When I was speaking with your employer, she used a different name and gender pronoun to refer to you. I wasn't sure if there was a typo on your claim or if you use a different name or pronoun than what Social Security has on file. Is there a different way that you would like to be addressed?"
 - c. When there is a business need to collect or confirm the name found on government-issued identification, questions should be specific to the business need.
 1. Ex. "To verify your identity, would you please confirm the name and gender on file with the Social Security Administration? [Customer provides name]. Thank you, and how would you like to be addressed? [Customer provides name]. Thank you, and let me know if there are different pronouns that we should use in our notes."
 - d. Any employee, contractor, subcontractor, vendor, or intern who makes a mistake when referring to another individual is encouraged to correct their mistake without drawing excessive attention to the other individual.
 1. Ex. Person A calls Person B "Mr. B." Person B responds by saying, "I go by Mrs. B." Person A then replies, "I'm sorry for my mistake, and thank you for letting me know." Person A then uses "Mrs. B" in future conversations with Person B without again referencing their mistake.
 - e. Regardless of name on government-issued identification, employees, contractors, subcontractors, vendors, and interns who use the statewide human resources management system Workday have the option to publicly display their preferred name and reserve the name found on their government-issued identification for confidential use in legitimate business purposes such as payroll. Preferred names may also be used in email addresses, internal and external directories, official badges, publications, business cards, etc. Pronouns may be shared wherever supported by current systems, such as in email signatures and business cards.
 1. Reasonable costs associated with updating workplace photographs, internal and external directories, official badges, publications, business cards, etc. will be assumed by the agency.
 - f. As current agency systems for customers were not designed to collect pronouns and preferred names, a goal of the agency is to include these functions when systems are updated. For example, a modernization project that began in 2017 is expected to update multiple customer-facing systems over the next several years. While this project continues and as other systems

are updated, customer-facing divisions within the agency will, with the customer's consent, record any pronouns and preferred names disclosed by customers in any available "notes" fields of current systems and use these notes to assist in respectful interactions with customers. Employees will inform customers of the limits of confidentiality for customer notes.

- g. In cases for which sex or gender must be collected and federal requirements allow for only the male or female options, agency systems will be updated as feasible to include an explanation that the male/female options must be collected under federal requirements, followed by a second question with additional options that are aligned with state law and policy.
 - 1. The agency will annually survey its workforce to collect information on employee gender identity and expression in order to track equal employment opportunity and elicit employee feedback.
- h. In cases for which names name found on government-issued identification must be collected from employees or customers to satisfy a legitimate business need, agency employees will explain that the name found on government-issued identification must be collected for business purposes but that the preferred name will be used to the extent that the agency's current systems allow for communicating with the employee or customer.

2. Official Records

- a. The Employment Department will update official records to reflect a change in gender marker or name upon request.
 - 1. This includes customer information, workplace photographs, internal and external directories, official badges, publications, business cards, etc. so that a customer, employee, contractor, subcontractor, vendor, or intern's gender identity and expression are accurately represented.
 - 2. Associated reasonable costs will be assumed by the agency.
 - 3. Certain employee or customer records, such as payroll information for employees or federal tax information for customers, may require updated government-issued identification before the agency can make the update. Requests to update information based on gender identity will follow the same processes as requests to update information for other reasons such as marriage, divorce, etc. The agency will accept copies of legal documents whenever possible and return original legal documents whenever possible to mitigate the expense to employees and customers of providing such documents.

3. Confidentiality

- a. Agency customers, employees, contractors, subcontractors, vendors, and interns have the right to discuss their gender identity or expression openly, or to keep that information private, and to determine when, with whom, and how much to share information about their gender identity or expression.
- b. Agency employees, contractors, subcontractors, vendors, and interns may not disclose information that reveals whether another individual is or is not transgender without that individual's explicit consent, unless the information disclosure is necessary to conduct official agency business.
 - 1. Ex. An agency employee is interviewing an unemployment insurance claimant who filed under the name Michael Washington. The agency employee correctly starts the conversation by asking how the claimant would like to be addressed. The claimant states

she goes by Michaela and uses she/her pronouns. The claimant adds that while working for her former employer, she went by Michael, which is the name on file with the Social Security Administration, and used he/him pronouns. The agency employee correctly asks Michaela how she would like agency representatives to refer to her when speaking with her former employer. Michaela requests that agency representatives refer to her as Michael and use he/him pronouns when speaking with the former employer, as she would like her gender identity kept confidential from her former employer. While interviewing Michaela's employer, the agency employee correctly uses Michael and he/him pronouns when referring to Michaela. In conversations with only Michaela on the phone, the employee correctly addresses Michaela by her preferred name of Michaela.

2. Circumstances may arise when, for example, an agency employee sends official correspondence or writes discoverable case notes regarding a person who would like their gender identity kept confidential or whose pronouns or preferred name are not known. While each circumstance will be addressed on a case-by-case basis, in all cases the goal is to ensure confidentiality and respect. Possible solutions include using the person's last name, Complainant/Respondent, or initials instead of the first name, and using "they" as a singular pronoun instead of using "he" or "she."

- a. Ex. When writing discoverable notes regarding Michaela from the example above and after checking with Michaela to determine how to refer to her in discoverable notes, the agency employee correctly writes, "Complainant stated they were discharged while in the hospital recovering from a car accident."

4. Facilities

- a. Customers, employees, contractors, subcontractors, vendors, and interns have the right to use the facilities, such as restrooms or locker rooms, which correspond to their gender identity without harassment or question from other customers, employees, contractors, subcontractors, vendors, or interns.
 - b. Individuals in transition and individuals who are gender non-binary, genderqueer, gender expansive, etc. may use whichever facility they determine is the safest and most appropriate option for them to use.
 - c. Any individual with a need or desire for increased privacy, regardless of the reason, will upon request and whenever possible be given the opportunity to use more private facilities such as single-user restrooms. However, no individual will be required to use these options.
 - d. The agency will make a good faith effort to provide gender-inclusive facilities at all worksites, including making a good faith effort to have gender-inclusive signage for all single-user facilities (whether for customers or employees).

5. Dress Codes

- a. The Employment Department does not have a dress code that restricts clothing or appearance on the basis of gender. All individuals have the right to dress in a manner consistent with their gender identity or expression.

6. Workplace Transition/Gender Affirmation

- a. Employees or interns who transition in the workplace or are in the process of transitioning when joining the agency (whether the transition is social, medical, involves changing government-issued identification, or any combination of these) will receive the full support of the agency in

developing an individualized plan for assisting them through a successful workplace transition. The plan may be adjusted over time based on request from the employee or intern.

1. Any employee or intern who would like to engage the support of the agency in their transition needs is encouraged to contact their Human Resources Business Partner, the Equity and Inclusion Officer, or any manager to start the process for developing their individualized plan. A manager who is contacted by an employee or intern about workplace transition will request their consent to include the Office of Human Resources in the discussion to provide resources and the development of an individualized workplace transition plan, including what the individual would like to request and which employees will be involved in implementing the individual's requests.
2. At all times, the individual who is transitioning in the workplace is to be the decision maker in determining when, with whom, and how much to share regarding their transition.
3. The following is a partial list of options for an individualized transition plan:
 - a. Updating the individual's email address and email signature, including pronouns.
 - b. Updating the individual's name in the phone directory.
 - c. Updating the individual's name and photo in the internal employee directory.
 - d. Removing previous workplace photographs and updating the name of the individual in internal or external newsletters, social media posts, etc. as is reasonable and to the extent permitted by public records law.
 - e. Deciding whether and how the individual's coworkers will be made aware of the individual's transition.
 - f. Requesting short or long term change in worksite or location within a worksite if the individual would prefer to transition away from their usual worksite or location.
 1. Ex. An individual might request to temporarily be assigned to a different WorkSource center or have their desk moved to another floor or room in their building during transition. Each request will be handled on a case-by-case basis, with the goal of supporting the individual to the extent possible.
 - g. Deciding whether and how the individual's coworkers will be given information or training regarding workplace transition or gender identity in the context of the individual's transition.
- b. Employees or interns receiving medical treatment as part of their transition may use otherwise-qualifying sick leave under the applicable collective bargaining agreement or Human Resources policies.
- c. Eligible employees or interns who qualify under the Family Medical Leave Act (FMLA) or the Oregon Family Leave Act (OFLA) may be entitled to take medical leave for the transition-related needs of themselves or their families. Employees are encouraged to contact the Office of Human Resources for the appropriate FMLA or OFLA eligibility information.

Review Schedule

This procedure will be reviewed every three years or more often as needed.

References

[Discrimination and Harassment Free Workplace Policy 50-010-01](#)

[Oregon Equality Act of 2007](#)

[Unlawful Discrimination in Employment and Places of Public Accommodation](#)

[Bureau of Labor and Industries Discrimination Oregon Administrative Rules](#)

[Bureau of Labor and Industries Technical Assistance for Employers: Gender/Gender Identity in the Workplace](#)

[Workplace Transition Plan \(Model Transgender Employment Policy\)](#)

[Valuing Transgender Applicants and Employees](#)

[Gender Pronouns: Frequently Asked Questions](#)

[Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Equal Access for the Transgender Community](#)

Attachments and Links

[Gender Identity 101 iLearn training](#)

Questions or Training

Questions	Human Resources Director 503-947-1319
Training	Equity and Inclusion Officer 503-947-1661

Approved

Kay Erickson
Signature on file with Policy Coordinator

Attachments:

Approval Signatures

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