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GUIDELINES FOR GENDER IDENTITY TOPICS IN THE WORKPLACE



DAS Chief Human Resource Office

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INDEX	Page #
<u>Introduction</u>	2
<u>Definitions</u>	3
<u>Names and Pronouns</u>	6
<u>Facilities</u>	8
<u>Official Records</u>	8
<u>Confidentiality</u>	9
<u>Dress Codes</u>	9
<u>Gender Transition / Affirmation in the Workplace</u>	10
<u>Sources</u>	12

Introduction

On October 25, 2019, Governor Kate Brown signed Executive Order 19-08, ensuring equal treatment under the law to Oregon's LGBTQ+ community. One of the items addressed in the Executive Order was employment:

“The Department of Administrative Services Chief Human Resources Office shall develop policies, standards, or other guidance to direct state agencies to respectfully accommodate employees and members from the public who are transgender, non-binary, or otherwise gender non-conforming.”

Employment policies

Oregon state government is committed to a work environment free of discrimination and harassment for all of its employees, including those who are transgender, non-binary or gender non-conforming. Oregon law includes sexual orientation as a protected class and defines it as “an individual’s actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.”

This document offers guidance to state agencies in how to respectfully interact with employees in a way that supports their gender identity while employed with Oregon state government.

The guidelines apply to all agency employees, services and worksites.

Every person is an individual with unique needs of their own. The guidelines are not meant to apply to every circumstance and needs are best assessed on a case-by-case basis. Regardless of the individualized approach, the state’s mutual or collective goal is to provide an inclusive and respectful environment for all employees of all gender identities.

Note: On June 15, 2020, the U.S. Supreme Court ruled that the 1964 Civil Rights Act protects gay, lesbian, and transgender employees from discrimination based on sex.



Definitions

The following is a partial list of common definitions that individuals may use to describe themselves and is intended to assist in understanding these guidelines. The list is not all-inclusive and it may change from time to time. Agency employees should respect the identity of each individual as expressed by that individual.

ALLY: Refers to a supporter or advocate for the Lesbian, Gay, Bisexual, Transgender or Queer community. Being an ally is about using inclusive language, showing respect and support for colleagues and in this case, members of the LGBTQ+ community through actions and words. Typically, allies to lesbian, gay and bisexual people are straight and allies to transgender people are cisgender.

ANDROGYNY: Describes gender expressions that have both masculine and feminine characteristics, but are not strictly either.

CISGENDER: People whose gender identity, expression or behavior aligns with those typically associated with their assigned sex at birth. It is the accepted term for people who are “not transgender.”

FEMININITY: Qualities that are thought of as being womanly, that are typically ascribed to women, and that are considered to be socially appropriate for a woman's behavior. Not all people who exhibit feminine qualities are women and not all women exhibit exclusively feminine qualities.

GENDER: While often used interchangeably with “sex,” gender refers specifically to the behavioral, cultural, psychological or social traits typically associated with one sex, rather than biological characteristics.

GENDER BINARY: The idea that there are only two genders, man and woman, rather than a continuum or spectrum of gender identities and expressions. The gender binary is often considered to be limiting and an inaccurate way to describe gender diversity.

GENDER EXPRESSION: A person's outward gender presentation in relationship to their culture, usually comprised of personal style, clothing, hairstyle, makeup, jewelry, vocal inflection and body language, etc. Gender expression is typically categorized as masculine, feminine or androgynous.

GENDER IDENTITY: It is distinct from the term “sexual orientation,” refers to a person's internal sense of being male, female, or something else. Since gender identity is internal, one's gender identity is not necessarily visible to others. This is the label someone may choose to describe themselves, such as: man, woman, non-binary. It represents a person's deep-seated, internal sense of who they are as a gendered being. This describes how someone identifies, regardless of their sex assigned at birth.

GENDER ROLES: The set of expectations that are ascribed to a certain gender in any given culture, relating to how people of that gender “should” (among other things) behave, talk, dress, etc.

GENDERFLUID: A person whose gender identity or expression shifts between masculine and feminine.

GENDER MARKER: The marker (male or female) that appears on a person's identity documents (e.g., birth certificate, driver's license, passport, travel or work visas, green cards, etc.). The gender marker on a transgender person's identity documents will be their sex assigned at birth until they undergo a legal and logistical process to change it, where possible.

GENDER NON-CONFORMING: A person whose gender expression is perceived as being outside of the cultural norms expected for that gender.

GENDERQUEER: A person whose gender identity is neither male nor female, or between or beyond genders.

INTERSEX: An umbrella term that describes a person born with sex characteristics (e.g. genetic, genital, sexual/reproductive or hormonal configurations) that do not fit typical binary notions of female or male biological sex. The term describes a wide range of natural variations in human bodies. Intersex is frequently confused with transgender, but the two are completely distinct and generally unconnected. A more familiar term, h*rm*phrodite, is considered outdated and offensive.



LGBTQ+: An acronym commonly used to refer to Lesbian, Gay, Bisexual, Transgender, Queer and/or Questioning individuals and communities.

MASCULINITY: Qualities that are thought of as being manly, that are typically ascribed to men, and that are considered to be socially appropriate for a man's behavior. Not all people who exhibit masculine qualities are men and not all men exhibit exclusively masculine qualities.

NON-BINARY: Terms used by some people who experience their gender identity and/or gender expression as falling outside the categories of man and woman. They may define their gender as falling somewhere between man and woman, or they may define it as wholly different from these terms.

PREFERRED OR ADOPTED NAME: Non-birth name that a person uses in self-reference. This may or may not be the name currently found on the person's government-issued identification.

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, zir, hir.

Note: Ze, zir, hir are gender neutral pronouns which are sometimes used by some people with alternative gender identities. Ze is usually pronounced with a long "e" and "hir" and its forms are usually pronounced like the English word "here." Instead of ze/hir pronouns, some people go by "ze/zir" pronouns because of the more consistent pronunciation and spelling.

SEX ASSIGNED AT BIRTH: The determination of a person's sex based on the visual appearance of the genitals at birth. The sex someone is labeled at birth. Assigned sex at birth is 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.

SEXUAL ORIENTATION: A person's feelings of attraction (emotional, psychological, physical, and/or sexual) towards other people. People who do not experience sexual attraction may identify as asexual. Under Oregon law, sexual orientation is an individual's actual or perceived heterosexuality, homosexuality,

bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

STRAIGHT: A heterosexual person. A person attracted to someone of a gender different from their own.

TRANSGENDER: An adjective that describes a person whose gender identity is not the same as the gender identity they were assigned at birth on the basis of their perceived biological sex. Transgender is a broad, umbrella term and is good for non-transgender people to use. "Trans" is shorthand for transgender. (Note: Transgender is correctly used as an adjective, not a noun or verb, thus "transgender people" is appropriate, but "transgenders" and "transgendered" are often viewed as disrespectful.)

TRANSITION OR GENDER AFFIRMATION: A process a person lives out 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. 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. 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.

X: Prior to July 13, 2017, state IDs have only given two options for gender marker: "M" (male) or "F" (female). Since then, the Oregon Department of Motor Vehicles has provided 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.

ZE: A gender-neutral third-person singular subject pronoun,* equivalent to the singular they, which coordinates with the gendered pronouns he and she. *Rare, nonstandard

ZIR: A gender-neutral pronoun declaring possessive much like him or her. A transgender person would use this pronoun if their gender identity was neither or both.

Ze/hir example: "Ze is a writer and wrote that book hirsself. Those ideas are hirs. I like both hir and hir ideas."

Ze/zir example: "Ze is a writer and wrote that book zirsself. Those ideas are zirs. I like both zir and zir ideas."

Names and Pronouns

All agency employees 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. The intentional or persistent refusal to respect an individual's gender identity may be considered harassment in violation of state policy.

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.


Employees who are not sure on how to address a co-worker may respectfully ask, "How would you like to be addressed?"

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. For instance, if there is a need to verify someone's identity, ask for it using the example below.



Ex. "To verify your identity, would you please confirm the name and gender on file with the Social Security Administration? [Employee responds]. Thank you, and how would you like to be addressed? [Employee provides name]. Thank you, and let me know if there are different pronouns that we should use in our notes."

Everyone makes mistakes. There may be times when employees may be unsure of the correct noun or name to use with another employee. If employees call someone the wrong noun or name, they are encouraged to correct it without drawing excessive attention to the other individual. Below is an example.



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.

Regardless of the name on government-issued identification, employees 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.

In cases for which sex or gender must be collected and federal requirements allow for only the traditional male or female options, agency systems will be updated, where 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: specifically, female, male, and non-binary.

Workday allows an employee to do the following:

- Preferred Name: An employee can select to use a preferred name. If they select to use a preferred name in Workday, the preferred name is what will show on their profile versus their legal name.
- Pronouns: An employee can select pronouns to be used. This selection can be made public so it shows on the employees profile.
- Gender Identity: There is an optional field in Workday where a person can select female, male, or non-binary/Other. The Gender field is required as male/female due to federal reporting regulations.

These can be changed under 'Personal Information' on your profile in Workday. For job aids on how to make these changes refer to Workday's training page <https://www.oregon.gov/das/HR/Pages/wd-training-emp.aspx>.

Facilities

Access to Gender-Designated Facilities:

Executive Order 19-08 directs, “State agencies shall permit persons to use restrooms and other gender-designated facilities consistent with their gender identity, to the extent permitted by governing law....”



Official Records

State agencies will update official records to reflect a change in gender marker or name upon request. This includes employee information, workplace photographs, internal and external directories, official badges, publications, business cards, etc., so that employees' gender identity and expression are accurately represented.

Certain employee records, such as payroll information, may require updated government-issued identification before the agency can make the update.

The process 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 of providing such documents.



Confidentiality

Agency employees have the right to discuss their gender identity openly, or to keep that information private, and to determine when, with whom, and how much information to share about their gender identity.

Agency employees 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.

Dress Codes

Oregon state government does not have a dress code that restricts clothing or appearance on the basis of gender or gender identity. All individuals have the right to dress in a manner consistent with their gender identity. There are some occupations that may require uniforms while in the workplace. The basis for such requirements are unrelated to gender or gender identity.



Gender Transition / Affirmation in the Workplace

Employees who transition after they are hired or who 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) can request support from their agency in developing an individualized plan to help them achieve a successful workplace transition.

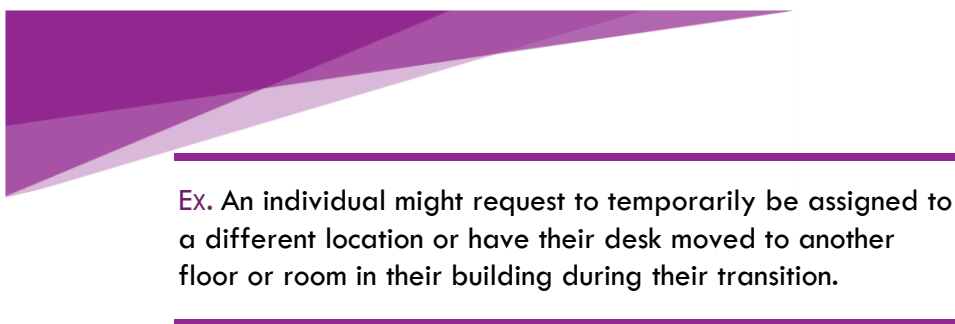
An employee who wants to engage the agency in their transition is encouraged to contact their human resources department or manager to start the process of developing an individualized plan. A manager who is contacted by an employee about workplace transition must request their consent to include the human resources department in the discussion to provide resources and develop an individualized workplace transition plan, which should include the individual's requests and which employees will be involved in implementing the individual's requests.

At all times, the individual who is transitioning in the workplace is the decision maker in determining when, with whom, and how much information to share regarding their transition.

Some of the considerations that may be part of the individualized plan include:

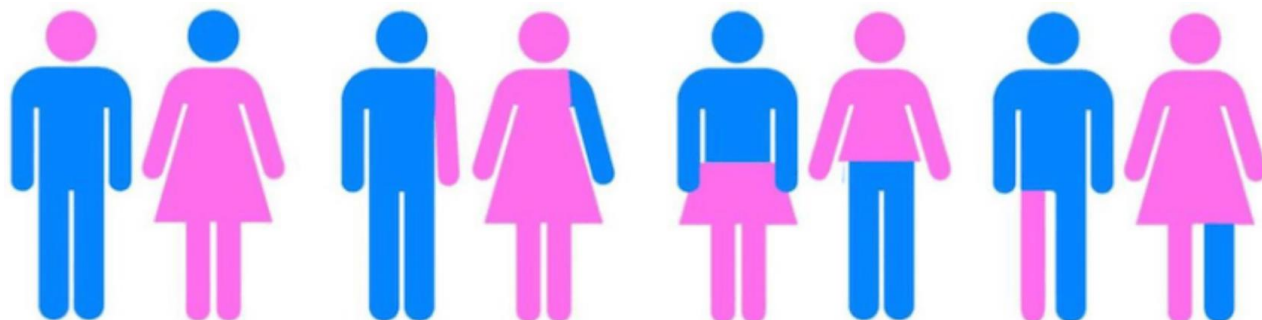
- Updating the individual's email address and email signature, including pronouns.
- Updating the individual's name in the phone directory.
- Updating the individual's name and photo in the internal employee directory.
- Removing previous workplace photographs and updating the name of the individual in internal or external newsletters, social media posts, etc., as is reasonable and to the extent permitted by public records law.
- Deciding whether and how the individual's co-workers will be made aware of the individual's transition.
- 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, as described in the following example.

Each request will be handled on a case-by-case basis, with the goal of supporting the individual to the extent possible.



Employees receiving medical treatment as part of their transition may use otherwise-qualifying sick leave under the applicable collective bargaining agreement or state policies.

Eligible employees 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 their human resources department for the appropriate FMLA or OFLA eligibility information.



Sources

Affirmative Action Plan for the Department of Administrative Services:

<https://www.oregon.gov/das/HR/Documents/DAS%2017-19%20Affirmative%20Action%20Plan%202017.pdf>.

State Policy, "Discrimination and Harassment Free Workplace":

<https://www.oregon.gov/das/Policies/50-010-01.pdf>

Basic Rights Oregon: <http://www.basicrights.org/>

Human Rights Campaign Foundation: <https://www.hrc.org/hrc-story/hrc-foundation>

Oregon Employment Department: <https://www.oregon.gov/employ/Agency/Documents/Gender-Identity-Expression-Procedure.pdf>

Job Accommodation Network: <https://askjan.org/blogs/jan/2015/10/strategies-for-developing-a-transgender-inclusive-workplace.cfm>

Massachusetts Institute of Technology: "Action Tips for Allies of Trans People.":

<https://trans.mit.edu/sites/default/files/documents/Action%20Tips%20for%20Allies%20of%20Trans%20People.pdf>

Gender Identity Guidelines Team:

Basic Rights Oregon

Oregon Employment Department

Katie Curtis

Brian Light

Brandy Meng

Serena Stoudamire

Carol Williams