

3. OFFER INCLUSIVE HEALTH INSURANCE. Many health insurance policies specifically exclude coverage for transition-related care. These exclusions often prevent transgender employees from obtaining medically necessary care such as hormone replacement therapy. Exclusions may even jeopardize a transgender employee's ability to get care for a procedure that has nothing to do with their transition. Many employers are recognizing this inequality and entering into health insurance contracts that do not exclude transition-related care. Additionally, a growing number of states and federal regulatory agencies are prohibiting insurance plans from having such exclusions. Advocate for your workplace to offer inclusive health insurance policies to employees.

4. RESPECT CONFIDENTIALITY AND PRIVACY. It is almost never necessary to disclose a person's transgender status to clients or other coworkers. In addition, it is never appropriate to do so without permission from your transgender coworker. Also, it is also generally inappropriate to ask a coworker questions about their private medical history or treatment. Such inquiries may violate HIPAA privacy rules. If you have information about the health care that someone has received as part of their transition, do not freely share it with anyone else unless your transgender coworker has given you permission to do so.

5. HELP COWORKERS WHO ARE HAVING TROUBLE WITH ANOTHER EMPLOYEE'S TRANSITION. It is important that coworkers support one another in respecting a transgender coworker's gender identity. When a transgender person transitions on the job, it can sometimes be difficult for coworkers to remember to use the correct name or pronoun. If you hear a coworker using the wrong name or pronoun, talk to them about it. It is likely just an unintentional slip and they will appreciate the reminder. If you hear coworkers making inappropriate comments about a transgender coworker's appearance or medical history, it is important to intervene in a respectful way. In most cases, coworkers genuinely want to be accepting and supportive of transgender coworkers and may simply not be fully aware of how to do so.

6. DON'T ASSUME THAT YOUR TRANSGENDER COWORKERS KNOW ABOUT ALL TRANSGENDER ISSUES OR WANT TO WORK ON TRANSGENDER CASES. While some transgender employees may have a special interest in working on or discussing transgender-related issues, others do not. If you have a coworker whom you know to be transgender, make sure that you aren't expecting them to have all of the answers or to do your research for you. Expecting a transgender person to be the company's expert on all things transgender both is an unfair burden on that person and can inadvertently tokenize them.

Transgender Law Center changes law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression.

You can access Transgender Law Center's model employer policy at:
www.transgenderlawcenter.org/issues

For support in working with transgender clients or transgender legal issues, please contact us at:
www.transgenderlawcenter.org/help

If you are interested in being added to our cooperating attorney network of transgender-friendly lawyers, please visit:
www.transgenderlawcenter.org



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Tips for Lawyers Working with Transgender Clients and Coworkers



Working with Transgender Clients

Transgender clients are not fundamentally different from non-transgender clients. They have the same need for respect, effective representation, and returned phone calls. Most often, the unique challenges they face originate from discomfort on the part of others. For some transgender people, previous experience with discrimination may lead them to be wary about opening up to a lawyer. This barrier may be something you will need to overcome in order to provide effective representation. Here are some things to keep in mind when representing a transgender client:

1. IT ISN'T ALWAYS ABOUT A PERSON'S TRANSGENDER STATUS.

Sometimes the legal challenge facing a transgender person is unrelated to their gender identity. It is important not to focus so narrowly on the fact that a person is transgender that you end up making that characteristic more important than the actual reason the person is seeking your services. It is important that you help your client focus on the real issue and avoid focusing on their gender identity if that is not the core legal issue.

2. BE AWARE OF ASSUMPTIONS YOU ARE MAKING ABOUT A PERSON'S GENDER.

It is very common to assume that you know a person's gender based on sex stereotypes. However, some people's gender is not immediately evident, or is different from what you may assume or expect. Transgender people in particular may not conform to narrow gender stereotypes. If you are unsure what a person's gender is, ask them (privately, if possible) what name and pronouns they would like you to use, and how they would like to be addressed.

3. REACH OUT TO ATTORNEYS WHO HAVE EXPERIENCE WORKING WITH TRANSGENDER ISSUES.

Because so many legal issues concerning transgender people are issues of first impression or are still being developed, it is important that you connect with knowledgeable attorneys as you begin to frame your legal arguments. In other cases, there may be an established approach to recurring issues, but one that is not well known outside of the community of advocates who specialize in transgender issues. Transgender Law Center may be able to offer assistance if you contact our helpline at: www.transgenderlawcenter.org/help.

4. USE THE CLIENT'S PREFERRED NAME AND PRONOUN IN ALL CORRESPONDENCE, COURT PAPERS, AND SETTLEMENT AGREEMENTS.

Except in extremely rare circumstances, it is very important that you use the name and pronoun that corresponds to a person's gender identity (for example, use male pronouns if your client has transitioned from female to male). In addition, your client may choose to use a name that is gender-neutral or associated with the gender that is different from the pronouns he or she prefers. It is important to be aware of and respect this decision. It may be necessary to footnote the person's prior name in a document, or to clarify in an initial letter that the recipient of the letter may know your client by their prior name or gender but that you will be referring to the client by their current name and gender. It is also important that you respectfully urge opposing counsel, court staff, and judicial officers to do the same.

5. DO NOT ASK INAPPROPRIATE AND IRRELEVANT QUESTIONS ABOUT A CLIENT'S MEDICAL TRANSITION.

Some transgender people access medical care in furtherance of their gender transition. This can include undergoing hormone therapy, psychotherapy, or having some kind of surgery that enables the person to better align their body with their gender identity. However, not all transgender people access medical care as part of their transition. A person's desire to access care can be impeded for a number of valid reasons – cost, pre-existing medical conditions, fertility – or they simply may not want to. Unless it is an essential factor in a case, it is not necessary for an attorney to know the details of their client's medical transition. Where it is relevant, be sure to ask respectfully and tell the client why you need to know.

6. MAKE SURE YOUR OFFICE HAS TRANSGENDER-FRIENDLY POLICIES.

Your intake forms should account for a person having an "AKA" name in addition to their legal name and should encourage or allow people to identify their sex based on their current gender identity. Your restrooms should be accessible to people based on their gender identity (as opposed to their birth sex or genital anatomy). Where possible, it is always a good idea to have a gender-neutral restroom option available. However, use of a gender-neutral bathroom should be an option for anyone who wishes to use it; a transgender employee or client should not be forced to use a gender-neutral bathroom. Finally, everyone in the office, not just the attorneys or legal staff, should be trained in basic transgender cultural competency including the importance of using preferred names and pronouns.

Working with Transgender Coworkers

Transgender people are employed in every industry and profession throughout the country. As a community, however, transgender people face frequent employment discrimination, which leads to high rates of unemployment and underemployment. Ensuring that your workplace is one in which all employees can fully participate is vital to combating discrimination and will also help to ensure that you can provide competent services to transgender clients. Here are some ways to ensure that transgender coworkers feel welcome:

1. CREATE MEANINGFUL AND ENFORCEABLE NONDISCRIMINATION POLICIES.

It is important to have a general statement of non-discrimination that includes gender identity and gender expression as well as sex. It is even more helpful to provide specific guidelines explaining what nondiscrimination means in this context. Such guidelines would include information about the need to use a person's correct name and pronoun, restroom accessibility, and confidentiality. This is particularly important for employers since federal law (Title VII) as well as the laws of at least 21 states prohibit discrimination based on gender identity.

Transgender Law Center has created a model employer policy on these issues, available at www.transgenderlawcenter.org/issues

2. HAVE STAFF TRAININGS.

Whether you know that you have a transgender employee on staff or not, it is important to have staff trainings on the issue. Some transgender employees may not be "out" about their transgender status and some may have transitioned years before coming to the company. In addition, while most staff want to be supportive of transgender coworkers, many will need guidance on how to do so. Trainings are a much more effective way of creating a respectful environment than simply relying on written policies. If you have an existing sexual harassment or other training, consider including examples specifically focusing on gender identity or gender expression discrimination.