



Gender Identity and Expression - Frequently Asked Questions

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1. What terminology should employers be aware of in relation to gender identity?

Employers should be familiar with the following terminology (non-exhaustive list) in order to prepare fit-for-purpose policies/procedures and in order to communicate effectively with trans employees.

- **Sex** is the designation of a person at birth as male or female based on their biology or anatomy.
- **Gender identity** refers to a person's deeply-felt sense of their own gender – for example, the knowledge that they are a man, a woman or some other gender. A person's gender identity may or may not correspond to their external body or sex assigned at birth.
- **Gender expression** is the external manifestation of a person's gender identity. Gender can be expressed through mannerisms, grooming, physical characteristics, social interactions and speech patterns.
- **Transgender or trans** is an umbrella term which refers to any person whose gender identity and/or gender expression differs from the sex assigned to them at birth. This includes non-binary identities.
- **Cisgender** is a person whose gender identity is aligned with their sex assigned at birth.
- **Trans woman** refers to a woman who was assigned male at birth but identifies as a woman. Some trans women make physical changes through hormones or surgery; others do not.
- **Trans man** refers to a man who was assigned female at birth but identifies as a man. Some trans men make physical changes through hormones or surgery; others do not.
- **Non-binary** is an umbrella term for gender identities that fall outside the gender binary of man or woman and thus do not conform to traditional gender roles.
- **Transition** is the process through which some transgender people begin to live as the gender with which they identify, rather than the one assigned to them at birth. Transition might include social, physical or legal changes.
- **Pronouns** indicate the gender of a person being referred to. Trans people may indicate a preferred pronoun for use in referring to their gender e.g., a trans man may use he/him and a

trans woman may use she/her. Some people, including those who identify as non-binary may prefer the use of third-party pronouns such as they/them.

- **Intersex** is a general term used to refer to a variety of conditions involving individuals whose anatomy, chromosomes, and/or hormones do not correspond with the binary definitions of male or female.

2. What is Gender Transitioning?

For most people, their innate sense of being either man or woman, i.e., their 'gender identity', matches the sex they have been assigned at birth and they have no questions about their gender identity. However, for others, this is not the case. If a person's sex assigned at birth does not match their gender identity, they may identify as trans. Trans people may undergo the process of aligning their gender identity with their outward identity, a process which is called 'transitioning'.

3. What is the process whereby a transgender person seeks for their gender to be legally recognised?

In 2007, the High Court ruled that Ireland was in breach of the European Convention on Human Rights as there was no process in place to legally recognise the gender of a transgender person.

As a result, a Gender Recognition Advisory Group was established. The Group advised on the legislation required to allow transgender people have their preferred gender legally recognised.

Since September 2015, transgender people in Ireland can apply to have their preferred gender legally recognised by the State, in line with the Gender Recognition Act 2015. Anyone over 18 can apply to legally change their gender. 16 and 17 year olds can also apply, where, in most cases, a longer process may apply.

When a person's gender is legally recognised, they are given a 'gender recognition certificate'. Once a transgender person has a gender recognition certificate, they can then apply for a revised birth certificate.

Many trans people change their name to better reflect their gender identity or expression. To legally change one's name, this must be done by deed poll. For the purposes of changing one's name and gender marker on their birth certificate a trans person must also register their deed poll in the High Court.

4. What legal protections are in place for transgender employees in the workplace in Ireland?

EU jurisdiction:

Discrimination towards a person in an employment context on account of gender reassignment is protected by EU law. The European Court of Justice in P v S and Cornwall City Council [1996] (Case C-13/9) ruled that workplace discrimination against people who are transitioning or have transitioned gender is deemed to be unlawful under EU laws targeting gender discrimination.

The Court noted that gender discrimination arose not only where people are treated differently because they were of one sex rather than the other, but also where people suffer discrimination:

“...arising... from the gender reassignment of the person concerned.”

The Court thus concluded that:

“Where a person is dismissed on the ground that he or she intends to undergo, or has undergone, gender reassignment, he or she is treated unfavourably by comparison with persons of the sex to which he or she was deemed to belong before undergoing gender reassignment. To tolerate such discrimination would be tantamount, as regards such a person, to a failure to respect the dignity and freedom to which he or she is entitled, and which the Court has a duty to safeguard.”

Irish jurisdiction:

The Employment Equality Acts 1998 to 2015 outlaw indirect/direct discrimination, sexual harassment, harassment and victimisation towards an employee based on any of the nine protected grounds, including gender.

The Unfair Dismissals Acts 1977 to 2015 prohibit the dismissal of an employee from work for reasons that are not fair.

Owing to the EU precedent in this area, a precedent which was reaffirmed by the Equality Tribunal in Hannon v First Direct Logistics Limited [DEC-S2011-066] the gender ground as stated in the Employment Equality Acts protects trans employees from ‘sex discrimination’, that is, discrimination arising from gender identity and gender expression. This decision was seminal as it represented the first time that the Employment Equality Acts were used to provide protection for trans individuals. It is likely also that dismissal on the grounds of gender reassignment would be treated as ‘unfair’ for the purpose of the Unfair Dismissals Acts.

5. How should the organisation respond if a candidate for a role discloses during the recruitment process that they are transgender?

If a candidate discloses during the recruitment process (particularly at interview stage) that they are transgender, the interviewer should remain professional, thank them for their openness and put them at ease and finally, explain that their being trans is not relevant to the job role and refocus attention back to the interview itself. It would be important to ensure that the interviewer understands their obligations in line with the Data Protection Acts 1988 to 2018 and the General Data Protection Regulation and keeps this information confidential. The candidate should know who will have access to this information. Only information that is needed should be stored, data should be held securely and there should be no informal sharing of this information. In addition, the information should not be used or processed for any other purpose than the purpose for which it was obtained in line with the Data Protection Acts 1988 to 2018.

If a candidate is trans, it would be important to remember that they may have worked under a different name in past jobs. Therefore, sensitivity should be displayed in terms of references, CV information and education records which may not reflect their gender identity. It may be best to ask the candidate sensitively how they would like to proceed if you are getting in touch with referees.

6. If an employee discloses that they are trans, is this information confidential?

The transgender status of an employee is considered confidential and should only be disclosed on a need-to-know basis, and only with the consent of the employee.

The organisation should be conscious of the rules of the GDPR and should only collect and process personal data relating to an employee's gender identity/transition where there is a lawful basis for doing so.

7. If an employee discloses to the organisation that they wish to transition or confirm their gender identity, what should the organisation do next?

At any point in the employment relationship, an employee may disclose to the organisation that they wish to transition or confirm their gender identity i.e., during recruitment, during induction or throughout their time in the organisation.

When this disclosure is made, a confidential 'transition plan' should be prepared in tandem with the employee. It is important to note that some stages of the transition will require more time than others (for example, legal changes), and therefore, organisations should set realistic timeframes for different stages.

Every employee's experience/requirements will differ depending on the circumstances, their role and any number of other factors. In this way, the 'transition plan' should be individualised and based on the consultation between the employee and the organisation, rather than a generic plan. Potential talking points include potential timelines, name changes, use of facilities and other supports.

Regular review meetings will be necessary. This will ensure that the right supports are in place and allow for updates to the plan if required.

The plan should consider what steps will need to be taken before, during and after the employee's transition.

8. If an employee discloses to the organisation that they wish to transition or confirm their gender identity, what questions should the organisation ask?

Once the employee informs the organisation that they are transitioning or will transition/once the employee discloses their gender identity, an initial conversation should take place between the employee concerned and a designated person. The designated person may be the employee's line manager/a HR representative/People Lead (this person should be adequately trained in the area of gender transitioning). The following talking points should be addressed:

- When will the employee transition in the workplace/when does the employee wish for their gender identity to be confirmed in the workplace? It would be important to consider the confidentiality of the process and how all conversations are strictly confidential between the designated person, the employee, and HR (where applicable).
- Who will be informed about the transition, and will the employee require support in communicating with colleagues/management?
- Will there be a change in how the employee identifies/wishes to be addressed – i.e., gender identity, name, pronouns, etc. and when should colleagues/management commence

referring to the employee using this name/pronoun? Will the employee's ID and e-mail address need to be changed and what are the timelines around this?

- When will company records need to be changed?
- What is the expected timeframe for the transition process?
- Which members of management/staff – i.e., line managers, colleagues, senior management, customers, etc. – should be informed about the employee's transition and has the employee given their consent for the information to be shared?
- Can the organisation support the employee in any way i.e., extension of the EAP, contact with TENI? For example, will the employee need some time-off from work for physical/emotional recovery during the process?
- What other supports will the employee need during the process, e.g., changes in uniform requirements, access to facilities (including bathrooms), etc.?
- Is there anything else that the employee would like to discuss/ask?

All of these talking points should be reflected in the transition plan.

9. Is there a legal requirement for the employer to offer time-off from work to the employee during the transition process?

There is no legal requirement for an employer to give paid time-off to an employee during the transition process.

However, the process of transitioning can be long, particularly where treatments are required. It can be both physically and mentally challenging. Therefore, as part of the transition plan, an employer should discuss with the employee, the manner in which time off can be taken during the transition process. Time off can be managed in a number of ways, such as through annual leave and/or compassionate leave. Occasionally (depending on individual circumstances) it may also involve certified sick leave. This should be discussed as part of the transition plan.

10. What records may need to be changed?

Changes to records should be discussed as part of the preparation of the transition plan. Any changes to records or identification will depend on the employee's individual circumstances.

Not all employees who wish to transition/confirm their gender identity will legally change their gender and/or name in line with the Gender Recognition Act 2015. Where a person's legal name does not match their new name, the new name should be used on all documentation, such as e-mail, phone directory, company identification card or access badge, name plate, etc., except where records must match the legal name, such as on payroll and insurance documents. In situations where an organisation is required by law to use someone's legal name or gender, it is recommended to adopt practices to avoid the inadvertent disclosure of such confidential information.

It is important to note that some of the below records may contain special category personal data, such as data concerning health. For this reason, this data should be maintained with privacy and in a highly confidential manner.

The following records may potentially be updated:

- Online HR system
- Payslips
- E-mail address
- Social profile i.e. Microsoft Teams (if applicable)
- I.D. badge
- Benefits records (the employee concerned may need to contact the benefit provider themselves if they have specific individual benefit arrangements)
- New hire form
- Insurance policies
- Name plates on offices
- Biographical information on company website

11. Can an employer retain records containing details of an individual's previous gender?

An employer is obliged to retain records for all employees. These records should be held in line with the Data Protection Principles and should be in line with the company data retention policy. The Ibec Framework Data Retention Policy can be found [here](#). One of the Data Protection Principles is "accuracy". The Data Protection Commission describes "accuracy" as *"Controllers must ensure that personal data are accurate and, where necessary, kept up to date; taking every reasonable step to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay. In particular, controllers should accurately record information they collect or receive and the source of that information."*

Under various pieces of legislation, such as the Organisation of Working Time Act 1997 and the Parental Leave Acts 1998 and 2019, there is a legal requirement to retain records for a specific period of time as provided for in the relevant legislation. For example, working time records should be retained for three years from the date of creation. For more information on recommended retention timeframes see our sample data retention policy [here](#). If an employee's legally-recognised gender and/or name at the time of the creation of these records was different to their current legally-recognised gender and/or name then as this was accurate at the time of creation an employer would not be required to retrospectively amend records. However, although such records should not be retrospectively changed, a note could be put on file stating that the individual's legally recognised name and/or gender has changed as of a particular date.

This same principle is applied to the Gender Recognition Certificate. The effect of such legal recognition is not retrospective and therefore all rights, responsibilities and consequences of actions by an individual prior to the date of recognition of the preferred gender remain unaffected.

12. Should employees who are transitioning be given time-off for medical appointments?

Some trans people make physical changes through surgery; others do not. In this way, not all employees who wish to transition/confirm their gender identity will need time-off for medical appointment(s)/surgery.

If an employee needs to take time-off for medical appointments, the normal company sick leave policy should apply. If appropriate, compassionate leave may also apply depending on the company policy, given how physically and mentally challenging aspects of transitioning can be.

Details of the employee's medical transition are private in nature between the employee concerned and their doctor – the organisation should avoid asking unnecessary or inappropriate questions in this regard and be conscious of its obligations under the GDPR.

13. How should the organisation approach issues around the use of bathrooms and changing facilities?

Every employee should have the right to use the bathroom/changing facility which aligns with their gender identity regardless of the sex they were assigned at birth. The organisation may facilitate a request by the employee to use a single-occupancy or unisex bathroom/changing facility during the transition process.

Access issues related to bathrooms and other gender-segregated facilities i.e., changing facilities/locker rooms, will be handled with sensitivity not only to the organisation's obligation to provide transitioning employees with the same level of facilities access available to all other employees, but also to the responses of co-workers and the comfort of the employee.

It would be advisable for this issue to be discussed as part of the transition plan, e.g., the employee concerned may wish to continue using the bathroom/changing facility that they had been previously using for a certain period of time i.e., until such time as they are comfortable using the bathroom/changing facility that corresponds with their gender identity.

A transitioning employee should not be required to use the bathroom of his or her designated sex at birth after they have begun transitioning.

Should there be concerns among other staff about the use of bathrooms/changing facilities by trans colleagues, such concerns can be addressed through training, communication and group/individual discussions led by management.

The organisation should avoid asking a trans employee to use the disabled bathroom or gender-neutral bathroom as this would not be appropriate. However, if a transitioning employee asks for access to separate facilities for privacy or safety reasons this should be taken seriously.

14. How should an employer inform colleagues and/or customers or suppliers that an individual is transitioning?

It is recommended for the employer and the employee to work together to agree a communication plan with colleagues and/or customers or suppliers. This should be included within the transition plan.

Some employees may wish to inform colleagues about their transition themselves whereas others may prefer for the organisation to communicate this on their behalf. Where the organisation is communicating on the employee's behalf, the wording should be agreed between both parties.

Both parties should agree as to whom is informed about the transition. Depending on the circumstances, it may only be necessary for colleagues working closely with the employee to be informed.

15. How should the organisation approach pronoun usage?

The employee's preferred pronouns should be discussed as part of the transition plan:

- What is the employee's preferred set of pronouns?
- At which point would they like for management/colleagues/clients to begin using them?

In everyday written and oral speech, the new name and pronouns should be used when the employee is ready. A phased approach may be suitable, e.g., the employee may wish to at first change their e-mail signature to reflect their new pronouns, followed by their I.D. badge, followed by widespread use in the organisation by colleagues/management/clients.

To note, if an employee is transitioning and it is not certain/it has not been established which pronouns should be used, it is appropriate to respectfully ask what name and which pronouns one should use.

In general, it is considered insensitive to refer to someone by the wrong pronouns (or name) once it has been established how they would like to be addressed.

It has become standard practice in many organisations for all employees to be encouraged to include their preferred pronouns in their e-mail signature. It is recommended for employers to communicate the agreed business style and company policy to employees with respect to the manner in which such a signature should be presented. The presence of preferred pronouns in e-mail signatures can send a message that an organisation is inclusive of everyone and acknowledges diversity in gender expression.

16. How should employers handle issues relating to the dress code/uniform policy while an employee is transitioning?

It is recommended for employers to be flexible regarding dress codes during transitioning.

The transition plan should outline at which point the employee would like to commence wearing different clothing, if this is something they would like to do. A sensitive and respectful approach should be taken in this regard.

Trans employees should be treated in the same way as cisgender employees in relation to the application of the dress code.

Where employees are required to wear a uniform, it is recommended for employers to arrange for a uniform for the appropriate gender to be available. This should be discussed with the individual while developing the transition plan.

17. What supports/resources are available for employees and employers?

Employees who need support or advice in relation to gender identity or expression should be advised to seek assistance from:

- Line Managers.
- The HR department.
- The Employee Assistance Programme [if applicable].

If employees or employers need support/more information from outside the organisation, the following resources are also available:

- **Transgender Equality Network Ireland** – TENI produced comprehensive guidance in 2017 entitled “[Supporting Transgender Inclusion in the Workplace: Guidelines for Employers and Employees](https://www.teni.ie/)”. There is also general guidance and useful information on <https://www.teni.ie/>

- **LGBT Helpline** – provides access to a network of trained volunteers who provide a non-judgmental, confidential, listening, support and information services for LGBT people as well as their family and friends. See <https://lgbt.ie/>

Sample Gender Identity and Expression Policy

1. Introduction

The organisation is committed to fostering a supportive, fair and inclusive working environment where everyone feels valued, regardless of their gender identity and/or expression.

2. Purpose

The purpose of the organisation's 'Gender Identity and Expression' policy is to provide information about the following:

- **Definitions** and supporting information.
- **Legal rights** of trans people in the organisation.
- **Procedures** in relation to supporting the needs of trans people in the organisation.
- The division of **responsibilities**.
- **Transitioning** in the workplace.
- The provision of **training**.
- **Communication** practices.
- **Confidentiality** and record-keeping.
- **Additional support** i.e., Employee Assistance Programme, TENI.

3. Scope

This policy applies to employees under a contract of employment with the organisation. However, the organisation will also engage with and support contractors at their request should they wish to change their gender identity/expression.

4. Relevant Legislation

The following employment legislation is applicable:

- **The Employment Equality Acts 1998 to 2015** prohibit discrimination on any of the nine grounds in the context of employment, conditions of employment, training, promotion and classification of posts.

- **The Equal Status Acts 2000 to 2015** prohibit discrimination outside of the context of employment, including education, provision of goods, services and accommodation and disposal of property.
- **The Unfair Dismissals Acts 1977 to 2015** give dismissed employees the right to bring a claim for unfair dismissal against their former employer.
- **The Data Protection Acts 1988 to 2018** regulate the collection, processing, storage and disclosure of personal information.

The Gender Recognition Act 2015 is also applicable. This legislation provides for a process enabling trans people to achieve full legal recognition of their preferred gender and allows for the acquisition of a new birth certificate which reflects this change.

5. Record-keeping and Data Protection

The following records may be requested/kept on site/checked:

- Birth certificate (this may be requested and checked).
- Gender recognition certificate (this may be requested and checked)
- Passport (this may be requested and checked, with the number and expiry date recorded).

The aforementioned data will be requested for the following purpose:

- To amend the employee's internal file in line with their legal name and gender.
- For those employees who have not acquired legal recognition of their name and gender, internal records, systems and/or documents will be amended where the employee's legally-recognised name and gender are not required, for example, phone directory or company identification card.

Where personal data in relation to an employee's gender identity is stored, such information will be kept up-to-date, and held securely and accurately, in line with the GDPR. Where such information is stored, the terminology/language used will be respectful and in line with the definitions in this policy.

[Insert reference to Data Protection Notice/Policy as applicable].

6. Confidentiality and Privacy

- All employees have the right to keep their gender identity confidential.
- All employees have the right to disclose their gender identity at any point in the employment relationship, and they have the right to disclose this information to everyone, certain members of management/colleagues or no-one at all.
- All information disclosed to the employer relating to a person's gender identity will be treated as confidential. Confidential information will only be disclosed with the employee's prior consent.
- Where an employee discloses their gender identity to a member of management, it will be agreed with the employee who else in the workplace might need to be aware of this information on a strictly confidential basis.

- Any information shared with the employer will be held in line with the Data Protection Acts 1988 to 2018 and the General Data Protection Regulation.

7. Training/Awareness

- Training will be provided to all employees, regardless of seniority.
- Certain members of management [such as a member of the HR Team] will be available to answer any questions about gender identity, the implementation of this policy and/or where to find other resources.
- [Insert names of relevant members of management and their roles if applicable].

8. Transitioning in the Workplace

The organisation will support employees who are transitioning/plan to transition in the following way:

- The organisation will support employees in whatever form their transition might take.
- Not all employees will decide to undergo a medical transition (some people make physical changes through hormones or surgery; others do not). Some may change their names or pronouns (officially or socially), their style of dress etc. in order to express their gender identity.
- Employees who may decide to transition or confirm how they identify are advised to contact either their line manager or the HR department, who will, in consultation with the employee and in confidence, create a transition plan to facilitate the employee's transition in the workplace. This plan will be specifically tailored to the circumstances and the employee's needs.
- Time-off for medical appointments/surgery will be treated in the same way as any other medical appointment or surgery [insert reference to absence management policy/sick pay scheme if applicable].

9. Bathrooms/Changing Facilities

All employees have the right to use the bathroom/changing facilities which corresponds with their gender identity, regardless of the sex that they were assigned at birth [insert details about gender-neutral bathrooms if there are any in the workplace].

10. Harassment

- The organisation seeks to create an environment where all employees are respected and are not subjected to harassment or sexual harassment.
- Any employee who subjects another colleague to inappropriate jokes, innuendos, insults or any other type of inappropriate conduct or abuse may be subject to disciplinary action, up to and including dismissal.

- [Refer to Dignity at Work/Equal Opportunities Policy if applicable].

11. Division of Responsibilities

- All employees are responsible for ensuring that the policy is complied with.
- All line managers/supervisors are responsible for ensuring that they support their direct reports who may be looking for more information about gender identity in the workplace or commencing their own transition.
- The HR department/management are responsible for being available to answer questions about this policy and provide confidential advice to employees where necessary.
- The HR Department is responsible for carrying out training, reviewing the implementation of the policy and communicating the policy to employees.
- The HR Department/Management have a responsibility to ensure the policy is upheld and to deal with any issues that arise in relation to gender identity/expression in the workplace.
- The Data Protection Officer is responsible for ensuring that records are kept adequately, securely and confidentially, in line with the Data Protection Acts 1988 to 2018 and the General Data Protection Regulation.

12. Additional Supports

Internal supports are available:

- Line Manager.
- The HR department.
- [Insert details about the Employee Assistance Programme, if applicable]

External supports are also available:

- Transgender Equality Network Ireland <https://www.teni.ie/>
- LGBT Helpline – provides access to a network of trained volunteers who provide a non-judgmental, confidential, listening, support and information services for LGBT people as well as their family and friends. See <https://lgbt.ie/>

13. Review

The organisation reserves the right to amend and update this policy over time in line with best practice, learnings and any changes in legislation.