

Employee Fact Sheet: Gender Identity and Expression

July 2017

This fact sheet supplements the state's Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy, which prohibits discrimination and harassment based on gender identity and expression.

Overview:

Montana state government is committed to promoting a diverse, respectful, and inclusive work and customer-service environment.

Executive branch managers must not tolerate discrimination or harassment based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, pregnancy, childbirth or a medical condition related to pregnancy or childbirth, sexual orientation, gender identity or expression, political beliefs, genetic information, military service or veteran's status, culture, social origin or condition, or ancestry.

Every employee is responsible for maintaining a work environment free from discrimination and harassment. Any employee who is found to have violated the state's EEO, Nondiscrimination, or Harassment Prevention Policy may be subject to disciplinary action.

This fact sheet establishes guidelines to ensure that employees and customers have the right to live, dress, and work in a manner consistent with their gender identity.

Definitions:

"Gender Identity" refers to a person's deeply held internal sense of being male, female, or

other gender, regardless of the sex the person was assigned at birth. The ability to determine someone's gender identity rests with the individual.

"Gender Expression" refers to the characteristics and behaviors that may be perceived as masculine or feminine, such as appearance, clothing, hairstyles, mannerisms, speech patterns, and social interactions.

"Transgender" refers to someone whose gender identity is different than the individual's sex assigned at birth.

"Gender Non-conforming" describes someone who has or is perceived to have gender characteristics and/or behaviors that do not conform to traditional or societal expectations.

"Gender Transition" is the process or time period when a person changes various personal aspects to be consistent with the person's gender identity. Many different ways to transition exist. For some people, it is a complex process that takes place over a long period of time; for others, it happens more quickly.

Transition may include "coming out" (e.g., telling family, friends, or coworkers), using a different name, changing pronouns (e.g., he, she, or they), changing clothing or appearance, and/or accessing medical treatment.

"Sexual Orientation" refers to a person's sexual or emotional attraction to other people. Heterosexuality, homosexuality, and bisexuality are examples of sexual orientation. A person's

sexual orientation is a distinct form of a person's gender identity or expression.

Name and Pronoun Usage:

It is important for managers and employees to address individuals by the name and pronoun that corresponds to the individual's gender identity or expression. Managers, supervisors, and coworkers should use the correct name and pronouns in records and communications regarding an individual. A court-ordered name or gender change is not required.

While employees may make mistakes from time to time with regard to an employee's preferred name or pronoun, the intentional or persistent refusal to respect an employee's gender identity (i.e., intentionally referring to the employee by a name or pronoun that does not correspond to the employee's gender identity) or use of derogatory terms can constitute harassment and is a violation of this policy. An employee engaging in such conduct may be subject to discipline, up to and including termination.

If you are unsure of what pronoun an individual might prefer, politely ask the individual how that person would like to be addressed. If you mistakenly refer to an individual by the incorrect name or pronoun, it's best to apologize and move on.

Gender pronouns include he, she, they, or any other pronoun requested by the employee.

Official Records:

Upon request, agencies will change an individual's official record to reflect a change in name or gender. To change an employee's name on certain types of records, like those relating to payroll and retirement accounts, may require a legal name change before the person's name can be changed. Some records,

however, such as email addresses and identification badges, can be changed to reflect a person's preferred name without proof of a legal name change. To change an employee's gender on any records does not require documentation.

An employee may request changes to state records through his or her supervisor or human resources (HR) staff, including state-issued email addresses and identification cards for employees.

Management and HR will promptly update workplace photographs of a transitioning employee, so the transitioning employee's gender identity and expression are accurately represented. If management cannot provide the requested update or change, he or she should explain to the employee why such change is not possible.

Confidentiality and Privacy:

Transgender and gender non-conforming employees and customers have the right to discuss their gender identity or expression openly or to keep that information private. The employee or customer gets to decide when, with whom, and how much private information to share.

Management, HR, and employees may not disclose information that may reveal an employee's or customer's transgender or gender non-conforming status to anyone without permission. Personal or confidential information may only be shared with the transgender or gender non-conforming employee's consent.

Intentionally disclosing personal information relating to an employee's or customer's transgender status or the sex the person was assigned at birth, gender transition, or related medical history may result in a violation of our

EEO, Nondiscrimination, and Harassment Prevention Policy and may constitute discriminatory harassment under the law.

Like other personal information, disclosure of this information can create a hostile environment and may single out transgender employees as objects of curiosity and social stigma.

Management and HR may not single out transgender or gender non-conforming employees or customers for intrusive requirements such as psychological or medical examinations based on their transgender status.

Management, HR, and employees may not disclose the transgender status of any former employee to new employers when responding to a background check or reference request.

Restroom Access:

Employees and customers have the right to safe and appropriate restroom facilities, including the right to use a restroom that corresponds to the individual's gender identity, regardless of the individual's sex assigned at birth. The individual does not need to show proof of gender.

Transgender women, for example, must be allowed to use the women's restroom, and transgender men must be allowed to use the men's restroom. That decision is up to the transgender individual to determine the most appropriate and safest option for the person.

Some employees may desire additional privacy. Where possible, management may provide unisex, single-stall restrooms for use by employees or customers who have a need for increased privacy, regardless of the underlying reason.

Single-occupancy restrooms or other facilities should be gender-neutral, not segregated by sex.

Locker Room Access:

Employees and customers have the right to use the locker room that corresponds to their gender identity. Any individual who has a need or desire for increased privacy, regardless of the underlying reason, may request a reasonable alternative such as a private area or locker room.

If a transgender individual requests increased privacy, management will provide alternative arrangements in a way that allows the individual to keep the person's transgender status confidential.

Dress Codes:

Employees must comply with any existing dress codes or grooming standards and have the right to do so in a manner consistent with their gender identity or gender expression. Existing dress codes or grooming standards cannot prohibit an individual from maintaining a gender-neutral appearance.

Sex-Specific Job Duties (BFOQ):

In the narrow circumstances where sex is a bona fide occupational qualification (BFOQ), employees should be classified and assigned in a manner consistent with their gender identity. Any BFOQ must be applied consistently with the principle that employees are able to live and work in accordance with their gender identity. Assignment of job duties or disqualification from a position on the basis of an individual's transgender status, related medical history, bodily autonomy, or non-conformity with gender stereotypes is not permitted.

Transitioning on the Job:

Employees who transition on the job can expect the support of management and HR.

Upon request, HR will work with employees individually to ensure a successful workplace transition, including procedures for adjusting personnel and administrative records, developing individualized communication plans, or navigating other aspects of workplace comfort.

Hiring Practices:

Applicants may use their preferred name and self-identified gender in an application rather than their legal name or assigned gender.

Hiring practices shall not require disclosure of an applicant's transgender status or sex assigned at birth or create adverse action based on failure to disclose this information.

Inquiries about legal names or prior names used may only be made after a conditional offer is made and must be necessary for legitimate business reasons.

Closing:

If you have questions, please contact your agency's HR office for more information.

Alternative accessible formats of this Fact Sheet will be provided on request. Persons who need an alternative format should contact the State Human Resources Division, Department of Administration, 125 N. Roberts St., PO Box 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call through the Montana Relay Service at 711.