



## Supporting Transgender Employees

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*More companies are helping transgender employees through the biggest transition of their lives. Are you ready?*

By Susan Milligan 9/1/2015







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It was a few weeks before Christmas in 1998 when Jillian Weiss, then working as a male attorney at a medium-sized New York City corporate litigation firm, confided in her secretary that she was considering transitioning genders. “I was close with her, so I told her what I was going through,” says Weiss, who was fairly new to the position at the time. “I’m guessing she told someone else because I was promptly terminated.”

After losing her job, Weiss decided it was the opportune time to make the transition to female—and she quickly learned that finding jobs would no longer come easily. “It was impossible,” she says. “This job search was nothing like previous job searches.” Despite having experience at several large law firms, she could land only a secretarial position, work she was grateful to get. “I was dealing with [transgender] friends who were living in the street and figuring out how to get a meal,” she says, “so I felt extremely privileged.”

A lot has changed since then. Transgender individuals still struggle to find fair treatment in the workplace, but corporate America appears to have reached a tipping point. A growing number of companies are grasping the need to include transgender status in their diversity efforts and policies. Indeed, 325 Fortune 500 companies now prohibit discrimination based on gender identification, compared to just three in 2000, according to the [Human Rights Campaign](#), a leading LGBT (lesbian, gay, bisexual, transgender) advocacy group. And there’s been a tenfold increase in the number of major corporations that offer transgender-inclusive health care coverage: 418 in 2015 compared with 49 in 2009.

Weiss herself has helped forge this path toward broader acceptance. After growing bored working in administrative positions, she returned to school to pursue a doctorate in law, policy and society at Northeastern University in Boston. She went on to become one of the first transgender individuals to receive tenure, which she was awarded in 2008 as a professor of law and society at Ramapo College of New Jersey.

Today, in addition to her position at Ramapo, she is a principal attorney at the [Law Office of Jillian T. Weiss](#) in Tuxedo Park, N.Y., which Weiss believes is the only firm to focus exclusively on transgender law. She and her

associate, Ezra Young, are currently handling about 20 active employment cases related to transgender rights nationwide, including four cases in federal court.

It's an area of law that's changing—fast. When Weiss wrote her doctoral dissertation on HR policies for transgender people in 2003, legal protections were few. Today, however, at least 20 states and a number of cities have expanded anti-discrimination protections to include transgender individuals, and two recent [Equal Employment Opportunity Commission](#) cases have asserted that gender identity is included in the definition of “sex” under Title VII of the Civil Rights Act of 1964. “It's becoming more and more clear that transgender people are protected,” Weiss says.

### Terms You Should Know

Here is a rundown of terms often used in association with transgender individuals:

**Transgender:** The term for a broad range of people whose gender identity or gender expression is different from that typically associated with the sex assigned to them at birth. It can include transsexuals, cross-dressers and those who are otherwise gender nonconforming.

**Transsexual:** A medical term for people whose gender identity and sex do not line up and who often seek medical treatment to bring their body and gender identity into alignment. Avoid using this term unless an individual self-identifies as such.

**Gender identity:** An individual's personal sense of gender. It is different from “sex,” which is the biological status of being male or female.

**Genderqueer:** How some people describe themselves when they present themselves in a gender-nonstandard way. Avoid using this term unless an individual self-identifies as such.

**Transitioning:** The process of going MTF (male to female) or FTM (female to male). The process can take some time and may include changes in dress, name and gender identification, as well as hormonal and surgical therapy.

**Gender expression:** How a person communicates gender identity to others through behavior, clothing, hairstyle, voice or body characteristics.

*Sources: Human Rights Campaign, American Psychological Association.*

While HR policies and state laws vary, one thing is clear: Companies that have a plan in place before an employee announces a gender transition will be in the best position to deal with any issues that arise. Organizations should know in advance how they will inform co-workers, managers and other colleagues, as well as who will provide that disclosure, says Jessica Liss, an employer trial lawyer and office managing shareholder for [Jackson Lewis](#) in St. Louis. Questions to address range from the practical, such as which pronoun to use, to the intimate, including which restroom a transgender individual should frequent.

### Deeply Personal Decisions

The [Transgender Law Center](#) approximates that between 2 percent and 5 percent of the population is transgender, although estimates vary and there are few dependable data sources. The U.S. Census Bureau doesn't ask people if they identify as transgender. Even if it did, responses might not be reliable because some people are afraid to answer in the affirmative and definitions of "transgender" vary.

It's also not clear what causes people to feel they are a different gender, though it's believed to be a perception they are born with, says Dr. Sherman Leis, a Philadelphia-area physician who has completed many transgender-related surgeries.

Not all transgender people undergo extensive physical transformations or surgery. Some have hormonal treatments alone, while others have operations on the face and chest but not the genitals. "Individuals can do whatever they want to—as much or as little as they feel comfortable with," Leis says.

However, unlike other matters related to an employee's personal life, such as one's health or sexual orientation, the process of transitioning to another gender cannot be hidden from co-workers (although those who have already transitioned prior to employment may choose to keep their transgender status private). That raises thorny issues for HR professionals who must protect the privacy of employees while dealing with the realities of how a gender transition will affect the transgender worker and his or her colleagues.

It's a process that often unfolds slowly. Before gender-reassignment surgery can be performed, if that is what the individual has decided to do, accepted medical practice requires prospective patients to spend a year living a "true life" as the desired gender in presentation and dress, while undergoing hormone treatments. In addition, two mental health specialists must approve the surgery.

That leaves a long lead time for employees and HR to adjust. But the process at work must start after—and only after—an employee is ready to go public. "A person has to make a decision at some point to transition. Before they actually do it, there may be a considerable gap in time," Weiss says. "They could go to HR and say, 'I'm thinking about transitioning, but until then I'd like you to keep that confidential.'" HR must respect that request for privacy.

## Reaching Out

Ideally, the office should be a place where transgender people feel welcome and not judged. That's the environment at Original Bread Inc. in Prairie Village, Kan. "You tell us when you're ready to make that profound change, and we'll help make it happen," says Christie Glaeser, director of human resources and training. Transgender people may experience rejection by their own families, she says, and work can become an oasis. "Here, we accept them unconditionally."

[Glassdoor](#), a Sausalito, Calif.-based company that provides profiles and ratings of employers for potential workers, reflects these changing attitudes. "Somebody who is transitioning wouldn't be that big of a deal here," says Mariah DeLeon, the company's vice president of people. "The phrase we have here is 'Bring your whole self to work.'"

At Aetna, the tone comes from the top, with the insurance company's executives championing a policy to assist transgender employees with all parts of their transitions (including coverage for therapy and surgery). "We engage all stakeholders, from peers to managers and, in some cases, customers," says Grace Figueredo, Aetna's chief [diversity and inclusion](#) officer.

Recently, an Aetna sales employee was in the process of transitioning. To communicate that to customers and clients, Aetna developed a toolkit that covered issues involving leave benefits, restroom use, communications with supervisors and co-workers, and the transitioning employee's preferred pronouns and names.

Meanwhile, Figueredo personally reaches out to transgender employees interested in sharing what they've learned with any newly transitioning employee as well as his or her manager and HR manager. The entire process is very much driven by the transitioning employee. "We follow their wishes and tailor to what makes them comfortable," she says.

At telecommunications equipment company Alcatel-Lucent, employees are encouraged to initiate a discussion about their plans to transition. That is easier than it might otherwise be because the company has already created a culture of inclusion and acceptance, says Brenda C. Sitton, equal opportunity/affirmative action manager in the company's Dallas-area office. "We encourage them to reach out to management or HR, whomever they feel most comfortable with," she says.

Co-workers need to know, as well, even those who are put off by the notion of a transgender colleague. "In the end, we ensure that everyone has a voice, everyone is heard," says Figueredo, who speaks with every co-worker who contacts her directly with concerns or who raises them indirectly (such as on a company blog). "I personally have a conversation with that employee until we get to a place where we are comfortable."

Some workers might still have objections, but Aetna's equal employment and anti-harassment policies are paramount. "While individuals are all entitled to their own opinions," she says, "in the workplace we do not tolerate harassment of any kind."

### **Bathrooms and Other Issues**

Employees' comfort levels, however, can be significantly tested by what is often the central workplace issue when a transgender person is on the payroll: use of the restroom. "The bathroom wars are where it starts," says **Todd Wulfson**, a partner at the law firm [Carothers DiSante & Freudenberger](#) in Orange County, Calif.

"A person comes in and says, 'I've got to spend a year as a woman [to be approved for gender-transition surgery] but, in order to do that, I would like to use the women's restroom.' But some women do not like having men show up in their bathroom." **Wulfson** adds, "I've got some clients that are extraordinarily progressive, but when it comes down to a man dressed as a woman in the bathroom, they all freak out."

At a Planet Fitness health club in Midland County, Mich., a female client protested to management when a transgender woman (whom the complainant viewed as a man) undressed in the locker room. Planet Fitness canceled the membership of the complaining client earlier this year, and she sued. The case is pending.

"In an HR context, I'm always surprised that it ends up being a point of contention," attorney Liss says. "The advice I give to employers is that the employee should use the bathroom of the gender they identify with."

Companies can install a third bathroom for transgender workers, but that could leave employees feeling singled out—not to mention it is likely impractical and expensive. In the end, the best solution may be to have gender-neutral bathrooms.

HR must also deal with basic paperwork, including changing name, e-mail address, company ID card name and photo, letterhead, nameplate, and health insurance documents. The name used on payroll documents, however, should not be changed until the transgender worker makes a legal name change.

Once word is out about an employee's decision to transition, it's up to HR to ensure that the transgender employee is not subject to harassment or exclusion. This is actually not very difficult, since transgender workers can easily be included in existing workplace behavior policies and sexual harassment training. Treat the situation like any other harassment case, says Alexa Miller, an attorney in the New Jersey office of [Fisher & Phillips](#).

Be aware of the potential for mistreatment while the transition is happening, and make it clear that having a religious objection to gender transition is not a defense to abusing a fellow employee. "Hate speech is not protected [in the workplace]," says James Reid, an attorney with [Maddin, Hauser, Roth & Heller](#) in the Detroit area.

Adds Weiss, "The most horrific things are said and done with zero consciousness ... [Companies] are putting themselves at risk for serious litigation."

Remember, what could be a difficult transition for the entire office can be made much easier when management makes it clear that there are no judgments—or only positive ones. At a holiday party at Glassdoor, a man showed up with his "two husbands," even though he was technically married to only one of the men. Hardly anyone batted an eye. "It just doesn't matter. It's who he is," DeLeon says. And if someone came to her with news of a gender transition? "If the person was open to it, we'd have a coming out party," she says.

Weiss, too, finds that she has more to celebrate these days. Most recently, her firm won a motion in a case involving a professor at Southeastern Oklahoma State University—the first that the Department of Justice has ever brought forward on behalf of a transgender employee. The professor, Rachel Tudor, was denied tenure shortly after she transitioned from male to female. The HR director at the university allegedly told Tudor that the vice president of academic affairs objected to the transition on religious grounds and would have preferred to terminate her, but that she could remain if she dressed professionally and observed bathroom restrictions.

## HR Do's and Don'ts

While each individual's transition is unique, experts agree on the following guidelines:

### Do

- Let the employee set the timetable.
- Respect the transgender worker's privacy.
- Select a point person—not necessarily an HR representative—who will listen to and assist the transitioning worker.
- Let the employee decide how to tell co-workers—in person, by e-mail or conference call, individually, or in a group.
- Use the names and pronouns desired by the employee.
- Be vigilant against subtle forms of harassment, such as co-workers deliberately using the wrong pronoun or excluding a transgender worker from meetings or events.

### Don't

- Don't ask personal questions about a person's medical or surgical history.
- Don't provide unsolicited "advice" on grooming and dress. This can feel demeaning.
- Don't "out" transgender colleagues or assume everyone is aware of a co-worker's transgender status. The decision to disclose is the employee's alone.
- Don't ask what someone's "real" name is. It implies the name they prefer is not real.
- Don't assume a transgender person's sexual orientation. Transgender people can be straight, lesbian, gay or bisexual.
- Don't evaluate a transgender person by how successfully he or she conforms to idealized gender standards.

On July 10, 2015, the U.S. District Court for the Western District of Oklahoma found, among other things, that Tudor is a member of a protected category and that she had sufficient evidence to sustain a complaint of a hostile work environment.

It was yet another step forward for Weiss, who has made a career out of blazing new trails.

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