




**State of Delaware
Department of Human Resources**

GENDER IDENTITY POLICY AND PROCEDURE	
Policy #: To be assigned.	Authority: 19 Del. C. 1953, §§710, 711, 711A; Workplace Harassment and Retaliation; Senate Bill 97- Gender Identity Nondiscrimination Act of 2013 – June 19, 2013
Effective Date: June 3, 2021	Supersedes: State of Delaware Guidelines on EEO and AA - Gender Identity Guidelines
Application: Executive Branch Agencies	Signature: 

1. POLICY PURPOSE STATEMENT

The State of Delaware vigorously promotes equal employment opportunity and workplaces free of unlawful or improper discrimination. This policy¹ sets forth guidelines to address the needs of transgender and gender non-conforming employees and clarifies how the law is to be implemented to protect the legal rights and/or safety of such employees. The goal is for the safety, comfort, and healthy development of transgender or gender non-conforming employees while maximizing the employee’s workplace integration and minimizing stigmatization of the employee.

2. SCOPE

This policy applies to all Executive Branch employees which includes casual/seasonal employees, interns, joint employees, volunteers and apprentices. This policy does not describe every situation that might occur with respect to transgender or gender non-conforming employees, and the needs of each employee must be assessed on a case-by-case basis.

3. DEFINITIONS AND ACRONYMS

The definitions provided here are descriptive and not intended to label employees but rather assist in understanding this policy and the legal obligations of the State to help explain concepts relating to transgender issues. The terms described below may not strictly conform to its legal definition. Other Department of Human Resources (DHR) resources may use different language in their definitions. Employees may or may not use these terms to describe themselves.

- **Assigned Gender at Birth** - a person’s gender assigned at the time of birth.
- **Gender** - refers to the socially constructed roles, behaviors, expressions, and identities.

¹ This policy is based on a number of existing policies including those adopted by major employers like Ernst & Young, Chevron, and the federal Office of Personnel Management, as well as guidelines and model policies created by the California Safe Schools Coalition and the Human Rights Campaign. <https://transgenderlawcenter.org/wp-content/uploads/2013/12/model-workplace-employment-policy-Updated.pdf>

- **Gender Expression** – refers to the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely and some characteristics may be acceptable as masculine, feminine, or neutral in one culture may not be assessed similarly in another.
- **Gender Identity** – gender identity means a gender-related identity, appearance, expression or behavior of a person, regardless of the person’s assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person’s core identity; provided, however, that gender identity and expression shall only be asserted for any proper purposes.
- **Gender Non-Conforming** – this term describes individuals who have, or are perceived to have, gender characteristics and/or behaviors that do not conform to traditional or societal expectations. These expectations may vary across cultures and have changed over time.
- **GHIP** – Group Health Insurance Plan
- **HIPAA** – Health Insurance Portability and Accountability Act
- **LGBTQ+** – a common abbreviation that refers to the lesbian, gay, bisexual, transgender and questioning. The “+” represents everything on the gender and sexuality spectrum that letters and words cannot yet describe.
- **Legal documents** – legal documents include, but are not limited to, employee records that involve payroll, pension, medical records, and benefits such as healthcare, life insurance, I-9 forms, and disciplinary records.
- **Sex** – refers to a set of biological attributes in humans.
- **Sexual Orientation** – a person’s physical or emotional attraction to people of the same and/or other gender. Straight, gay, bisexual are some ways to describe sexual orientation. It is important to note that sexual orientation is distinct from gender identity or expression. Transgender people can be gay, lesbian, bisexual, or straight, like non-transgender, non-binary individuals, and agender.
- **Transgender** – an umbrella term that can be used to describe people whose gender identity and/or expression is different from their sex assigned at birth. A person whose sex assigned at birth was female but who identifies as male, is a transgender man. A person whose sex assigned at birth was male but who identifies as female is a transgender woman.
- **Transitioning** – refers to the process through which a person modifies his or her physical characteristics and/or manner of gender expression to be consistent with his or her gender identity. This transition may, but does not necessarily include, hormone

therapy, sex reassignment surgery and/or other components, and is generally conducted under medical supervision based on a set of standards developed by medical professionals.

4. POLICY

- a. It shall be an unlawful employment practice for an agency to fail or refuse to hire or discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race², color, disability, marital status, veteran's status, genetic information, age, religion, sex, sexual orientation, gender identity or expression or national origin; or limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee because of such individual's race, color, disability, marital status, veteran's status, genetic information, age, religion, sex, sexual orientation, gender identity or expression or national original.
- b. Confidentiality and Privacy - Information about an employee's transgender status, (such as the sex they were assigned at birth) may constitute confidential medical information under privacy laws like the Health Insurance Portability and Accountability Act (HIPAA). Transgender employees have the right to discuss their gender identity or expression openly, or to keep that information private. The transgender employee decides when, with whom, and how much to share their private information. The employee's personal or confidential information may only be shared with the employee's consent and with coworkers who truly need to know for job related reasons. Management, human resources (HR) staff, or coworkers are not to disclose information that may reveal an employee's transgender status or gender non-conforming expression to others.
- c. Employee Records - For tax, fiscal and other purposes relating to an individual's name of record, a name cannot be legally changed by an employee without certain actions through the courts and authorities.³ These records shall be updated promptly after presentation of a legal name change.

On other non-legal documents, an employee who is undergoing a gender identity change may change their identity to the gender with whom they identify, whether they are going through the formal medical transition process or seeking a legal name change. The person will be referred to by their preferred name and pronouns and non-legal personnel records will be modified to reflect the name and gender requested by the employee. Changes to the employee's "sex" designation on employee records should be made only in consultation with the employee, as such changes may impact eligibility for benefits.

² "Race" includes traits historically associated with race, including hair texture and a protective hairstyle includes braids, locks, and twists.

³ <https://delcode.delaware.gov/title10/c059/index.html>

Management shall ensure records that do not reflect a name that corresponds to an employee's gender identity are kept confidential. These records shall only be shared with individuals who have a compelling need to access them or for whom the employee has granted express permission.

- d. Names/Pronouns - All employees have the right to be addressed by the name and pronouns corresponding to their gender identity, as indicated by the employee. An employee who is not going through the formal medical transition process, but who is undergoing a gender identity change and who has not had or is not seeking a legal name change, may change identity to the gender with whom they identify. The person will be referred to by their preferred name and pronouns and will have all rights of employment. A court-ordered name or gender change is not required to revise certain employment documents. Persistent and intentional refusal to use an employee's preferred name and pronouns may constitute harassment and may be a violation of this policy and/or the Respectful Workplace and Anti-Discrimination Policy.
- e. Transitioning - Employees have the right to be who they are openly. This includes expressing their gender identity without fear of consequences. There are rights, expectations, and responsibilities of each party associated with an employee's gender transitioning in the workplace. Employees who transition can expect the support of management and HR staff. Agency management and HR will work with each transitioning employee individually for a successful workplace transition. It is essential that open and honest communication be established to build trust.
- f. Appearance Standards - The State of Delaware has the right to regulate employee appearance and behavior in the workplace for bona fide occupational requirements, including safety standards, which shall be the guiding principles for all employees. Employers are permitted to require employees to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of State or Federal law⁴. The decision as to when and how to begin presenting in accordance with one's gender identity remains the employee's choice. Agency dress codes should be applied to employees transitioning to a different gender in the same way that they are applied to other employees of that gender. Agency safety standards and procedures associated with safe personal protective equipment and apparel shall be enforced by management and complied with by the transitioning employee.
- g. Restroom/Locker Access - The State of Delaware will provide employees with the same access to gender-specific facilities based on their gender identity. An employee whose gender identity does not match their assigned sex at birth, including a transitioning employee, will have access to the gender-specific facilities (including

⁴ Title 19 *Del. C.* Sec 711 (q) Nothing in this subchapter shall affect the ability of an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards not precluded by other provisions of State or federal law, except that an employer shall allow an employee to appear, groom and dress consistent with the employee's gender identity.

restrooms) that corresponds to their gender identity, when the employee first begins presenting in accordance with such gender identity.

Whenever practical, a single stall or gender-neutral restroom may be utilized, which all employees may utilize. A transgender employee shall not be compelled to use another restroom due to complaints or concerns from other non-transgender employees.

- h.** Health Insurance Coverage - The Group Health Insurance Plan (GHIP) may provide coverage depending on the employee's plan. Please refer to dhr.delaware.gov/benefits.

5. PROCEDURES ASSOCIATED WITH THIS POLICY

- a.** When an employee notifies of their intent to transition, Agency Human Resources representative shall:
- Inform the employee that the conversation will be held in confidence and discuss how the Agency HR representative and the State Agency can assist during any transition. Ask the employee for their suggestions on what they can do to help.
 - Confirm who will be the main point of contact (manager or Human Resources) to assist the transition at the workplace and schedule a meeting with the employee to discuss and agree upon any action plan to assist the employee in their transition.
 - Ask the employee if they expect to change their name. If yes, ask what name and pronouns the employee will use and when management should begin using them.
 - Ask the employee if they wish to inform their manager, co-workers, and clients themselves, or prefers that this be done for them, or prefers that co-workers or clients not be informed of some or all information concerning their gender identity and document the interaction. Then determine the best timing and information flow for that process. Whenever a plan is determined, the agreement should be provided in the form of a written consent. For example, an agreement should be written and signed that states how and when management will share and communicate the employees preferred name and pronouns. The State's Employee Assistance Program may be contacted for assistance.
 - While information should be disclosed only in consultation with the employee and on a "need to know basis," it is encouraged that transitioning employees consent to participate in necessary education of their co-workers at whatever level they are comfortable.
 - If the employee is anticipating medical treatment, explain applicable leave policies.
 - Discuss adhering to the company's dress code and the timing in which the employee will begin their transition at work. This may be the point at which the individual begins to present consistently with the new gender identity, including change of name (if any), pronouns, dress, grooming, appearance, and restroom use. It is important to understand that each person's transition process may be unique and may occur on a progressive basis and not all at once.
 - Provide employee with available resources. Ask the employee to inform you of anything else you can do to be of assistance.
 - Supervisors shall maintain a professional attitude towards the employee's changed

appearance. This means that the employee shall be treated in the same manner as any other employee that is aligned with the new gender identify when it comes to issues related to dress code, professional attire, and employer-issued safety gear. Contact Human Resources if you have a questions or concerns.

b. Statement of Confidentiality

- The gender identity status of an employee is considered confidential and should only be disclosed on a need-to-know basis, and only with the written consent of the employee. However, transitioning employees are encouraged to participate in the education of their co-workers at whatever level they feel comfortable.

c. Addressing Co-workers and Customers

- In consultation with the transitioning employee, hold an initial workgroup meeting at which the employee's manager discusses the transition (if the transitioning employee agrees), and offers trainings, or briefing sessions for employees on gender identity and gender identity transition. Care should be taken not to disclose the employee's confidential medical information. Remind all employees that they are expected to conduct themselves in accordance with state law, regulations, and policies. This discussion provides important information to co-workers, managers, and customers on what to expect when the individual begins to transition. Establishing a level of comfort as to what the transition is and why it is happening is important for preventing misunderstandings or issues.
- Employees who raise concerns about a transgender co-worker should be provided with resources to assist in their understanding of LGBTQ+ issues by their immediate supervisor and an HR representative to help the employee address their concerns. This education should be reinforced with the employee to include a review of the State of Delaware's Equal Employment Opportunity Executive Order, the Merit Rules, the Respectful Workplace Anti-Discrimination policy, and other relevant statute, State, or Agency operational procedures. They should be informed that all employees are expected to work cooperatively and respectfully with their co-workers regardless of their gender identity and that failure to do so is a violation of State directives and could result in disciplinary action.
- If employees express concern regarding the appearance of a transgender co-worker after reviewing the State of Delaware's policies or if they are curious about the change in appearance, a Human Resource representative or employee manager may meet with the employees individually to inform them of the change, with the consent of the transitioning employee, and to answer questions, subject to applicable privacy laws, regulations, and policies.
- If employees have concerns with a co-worker's usage of a restroom or other sex-segregated facility after reviewing the State of Delaware's policies, the employee with the concern may be permitted to use a different or single-occupancy facility consistent with their gender identity, if such facilities exist at the work location.

- d. Employee Records - Where records must match the employee's legal name (legal documents), the legal name is to be retained until, and if, formal notification of a name change has been received. On non-legal documents and following a request or consultation with the employee, the agency shall update or change the employee's name and gender to the new gender specific name. If a new or transitioning employee has questions about personnel records, the employee should contact their agency HR representative.
- e. Preferred Names/Pronouns - The person will be referred to by their preferred name and pronouns. If an agency representative is unsure what name or pronouns are preferred by the employee, politely ask them how they would like to be addressed in this context. Pronouns include "he/him/his," "she/her/hers," gender-neutral pronouns options include "they/their/theirs." .
- f. Transitioning - Transitioning employees, including employees who have not started physical transitioning, will often assume a new gender-specific name. Employees may choose to notify a supervisor, who must then consult with agency HR. When a disclosure is made, agency HR will meet with the employee to discuss the employee's rights and partner with the employee to determine their needs, concerns, and provide assistance and support. Whenever possible, contact should be made by the employee in advance of the employee's planned transition date.

6. EXCLUSIONS OR EXCEPTIONS

- It is not the intent of this policy to allow an employee to assert gender identity or expression improperly.

7. DISSEMINATION AND TRAINING

- a. The Agency HR office shall provide a review of this policy and procedure to current employees within 30 business days of its effective date and shall provide employees who are new to their respective Agencies a review of this policy and procedure within 30 business days of the employee's hire date.
- b. Employees must read and acknowledge receipt of this policy in the Delaware Learning Center, or if not applicable by other means, within 30 business days of its effective date.
- c. All new employees and new supervisors shall attend Gender Identification training as prescribed by DHR.

8. DATA REQUIREMENTS/REPORTING

All Agencies are required to keep records of complaints alleging violation of this policy.

9. ASSOCIATED POLICY/REGULATIONS/INFORMATION

- Safe Zone Project for training focused on LGBTQ+ identities, gender and sexuality, prejudice, assumptions, and privilege. <https://thesafezoneproject.com/learn/>
- [Respectful Workplace and Anti-Discrimination Policy](#)
- [EEO Executive Order #30](#)
- Employee Assistance Program
 - <https://dhr.delaware.gov/benefits/compsych/index.shtml>
 - <https://dhr.delaware.gov/benefits/contact/compsych.shtml>
- Human Rights Campaign Foundation – <https://www.hrc.org/>
- National Center for Transgender Equality – www.nctequality.org
- Out & Equal Workplace Advocates – www.outandequal.org
- World Professional association for Transgender Health – www.wpath.org

10. APPENDICES AND FORMS ASSOCIATED WITH THIS POLICY

N/A

This policy is not intended to create any individual right or cause of action not already existing and recognized under State and Federal law.