

GENDER IDENTITY POLICY AND PROCEDURE - Statewide	
DHR-STW-Policy #: DHR-STW-102.1	Authority: 19 Del. C. 1953, §§ 710, 711, 711A
Effective Date: October 31, 2022	Revision Date: April 17, 2024
Supersedes: June 3, 2021; March 7, 2022	Signature: <i>Claire M. DeMatteis</i>
Application: Executive Branch Agencies	

### 1. Policy Purpose Statement

The State of Delaware vigorously promotes equal employment opportunity and workplaces free of unlawful or improper discrimination. This policy<sup>1</sup> 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 for this Policy includes full-time, part-time, casual/seasonal employees, interns, joint employees, volunteers, and apprentices.

### 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) LGBTQ+ written 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.
- **Agender** – noting or relating to a person who does not have a specific gender identity or recognizable gender expression.
- **Gender** – refers to the socially constructed roles, behaviors, expressions, and identities.
- **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

<sup>1</sup> This policy is based in part 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>

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 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
- **Non-binary** – noting or relating to a gender identity that does not fit into the binary male/female division. Relating to, intended for, or common to any gender; [gender-neutral](#).
- **LGBTQ+** – a common abbreviation that refers to lesbian, gay, bisexual, transgender and questioning persons. The “+” represents everything on the gender and sexuality spectrum that letters and words cannot yet describe.
- **Legal documents** – Official employee records such as payroll, pension, I-9 forms, medical records, and benefits records such as healthcare, life insurance, 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.
- **Trauma Informed Care (TIC)** - an intentional approach to understanding and interacting with people who have or may be experiencing trauma. It assumes that most people are likely to have at least one traumatic event at some point in their lives and that, for some, this impacts the way they perceive the world and engage with others.

#### 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

race<sup>2</sup>, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, national origin, veteran's status, pregnancy, genetic information, or religion; 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, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, national original, veteran's status, pregnancy, genetic information, or religion.

- b. Employees are expected to work cooperatively and respectfully with co-workers regardless of their gender identity and failure to do so may be considered a violation of State policy.
- c. Agency representatives shall use the Supporting Transgender Individuals in the Workplace documents and [Gender Transition in the Workplace Transition Plan](#) when working with employees who have disclosed, employees who plan to, or employees who are transitioning.
- d. 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.
- e. 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 other authorities.<sup>3</sup> 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 request to change their identity to the gender with whom they identify, regardless of whether they are going through the formal medical transition process or seeking a legal name change. Non-legal personnel records will be modified to reflect the name and gender requested by the employee, where possible. Changes to the employee's "sex" or "gender" designation on employee records should be made only in consultation with the employee, as such changes may impact eligibility for benefits and other entitlements.

Management shall safeguard records that do not reflect a name that corresponds to an employee's gender identity as 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.

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

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

- f. Preferred Names/Pronouns - Employees have the right to be addressed by the name and pronouns corresponding to their gender identity, as indicated by the employees. The person has the right to be referred to by their preferred name and pronouns and will have all applicable rights of employment.
- g. Transitioning - Employees have the right to express 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, supervisors, 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.
- h. 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 law<sup>4</sup>. 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.
- i. 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 restrooms) that correspond 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 made available, 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.

- j. 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](https://dhr.delaware.gov/benefits).

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<sup>4</sup> 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.

## 5. Procedures

- a. When an employee provides notification of his or her intent to transition, agency Human Resources representative shall:
  - 1) Demonstrate compassion and understanding, actively moving past cultural stereotypes and biases by exhibiting emotional intelligence, and showing empathy in communication by providing encouragement and support to the employee per a Trauma Informed Care (TIC) approach.
  - 2) Provide the employee with the [Supporting Transgender Individuals in the Workplace Guidance for Transgender Employees](#).
  - 3) 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 suggestions on what assistance or support may be needed.
  - 4) 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.
  - 5) Complete the [Gender Transition in the Workplace Transition Plan](#) with the employee. As part of completing the Workplace Transition Plan:
    - a. Ask and document whether the employee wishes to:
      - i. Personally inform the employee's manager, co-workers, and clients; or,
      - ii. Requests such notification be done by a supervisor; or,
      - iii. Requests that co-workers or clients not be informed of some or all information concerning the employee's gender identity.
    - b. Then determine the best timing and information flow for that process. When the plan is developed and agreed upon, the terms shall be documented in the Workplace Transition Plan and signed by the employee, the supervisor, and the HR representative. The State's Employee Assistance Program may be contacted for assistance.
    - c. 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.
    - d. Ask the employee if they expect to change their name. If so, ask what name and pronouns the employee will use and when management and coworkers should begin using them.
  - 6) If the employee is anticipating medical treatment, explain applicable leave policies.
  - 7) Discuss adhering to the agency'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.
  - 8) Provide employee with available resources; ask employee to make contact with their supervisor or if HR can be of assistance.
  - 9) May remind supervisors that they shall maintain a professional attitude towards any

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 identity when it comes to issues related to dress code, professional attire, and employer-issued safety gear. The supervisor may contact HR for any 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
- 1) 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 offer trainings, or briefing sessions for employees on gender identity and gender identity transition. The employee's confidential medical information shall not be disclosed in these discussions. Remind all employees that they are expected to conduct themselves in accordance with state law, regulations, and policies, as well as provide empathy and understanding. 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 and compassion as to what the transition is and why it is happening is important for providing a healthy and productive work environment.
  - 2) 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 #30](#), [the Merit Rules](#), [the Respectful Workplace and Anti-Discrimination policy](#), and other relevant statute, State, or agency operational procedures.
  - 3) If employees continue to 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.
  - 4) 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, where possible. If a new or transitioning employee has questions about personnel records, the employee should contact their HR agency representative.

- e. Preferred Names/Pronouns -The person will be referred to by their preferred name and pronouns. If an agency representative or any employee 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**

- This policy is to allow for the sincere assertion of an employee to declare a change in gender identity or expression.

## **7. Dissemination and Training**

- The DHR 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.
- Employees must read and acknowledge receipt of this policy in the Delaware Learning Center, or if not applicable by other means, within 30 days of notification.
- Employees and supervisors shall attend required training as prescribed by DHR.

## **8. Data Reporting**

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

## **9. Associated Policy/Regulations/Information**

- Employee Assistance Program
  - <https://dhr.delaware.gov/benefits/compsych/index.shtml>
  - <https://dhr.delaware.gov/benefits/contact/compsych.shtml>
- [Executive Order #30](#)
- [Executive Order #24](#)
- Human Rights Campaign Foundation – <https://www.hrc.org/>
- National Center for Transgender Equality – [www.nctequality.org](http://www.nctequality.org)
- Out & Equal Workplace Advocates – [www.outandequal.org](http://www.outandequal.org)
- [Respectful Workplace and Anti-Discrimination Policy](#)

- Safe Zone Project for training focused on LGBTQ+ identities, gender and sexuality, prejudice, assumptions, and privilege. <https://thesafezoneproject.com/learn/>
- [State of Delaware Merit Rules](#)
- [Supporting Transgender Individuals in the Workplace Guidance for Transgender Employees](#)
- [Supporting Transgender Individuals in the Workplace Guidance for Human Resources and Management](#)
- World Professional association for Transgender Health – [www.wpath.org](http://www.wpath.org)

## 10. Appendices and Forms Associated with this Policy

- [Gender Transition in the Workplace Transition Plan](#)
- [Supporting Transgender Individuals in the Workplace Checklist for Human Resources](#)
- [Supporting Transgender Individuals in the Workplace Guidance for Human Resources and Management](#)
- [Supporting Transgender Individuals in the Workplace Guidance for Transgender Employees](#)

## 11. Policy Owner

- Division Name: Division of Talent Management
- Policy Administrator: Employee Engagement Administrator
- Website: [DHR - Employee Engagement \(delaware.gov\)](http://DHR - Employee Engagement (delaware.gov))

*This policy is not intended to create any individual right or cause of action not already existing and recognized under State or Federal law. If there is a conflict with, i.e., the law or regulation and this policy, the law and/or regulation govern.*