

Caitlyn Jenner raises awareness, questions about transgender people



Olympic gold medalist and reality television personality Bruce Jenner has become Caitlyn Jenner.

Jenner's transition has been well documented by the media, culminating in a photo of Caitlyn on the cover of *Vanity Fair*.

Although her journey has been more public than most, Jenner's story is not unique. It is estimated that 700,000 people in the United States are transgender, and that estimate is regarded by some experts as conservative.

As a law office manager, you should become familiar with gender identity, as it could affect your interaction with a staff member, job candidate, client, lawyer, or vendor.

The following guidelines, issued by the U.S. Office of Personnel Management (OPM), apply to the federal workplace. Nevertheless, because they answer important questions and serve as a best practice, *Law Office Manager* shares them here. It is recommended that you review these guidelines and adapt them as necessary for your firm.

Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace

Policy and Purposes

It is the policy of the Federal Government to treat all of its employees with dignity and respect and to provide a workplace that is free from discrimination whether that discrimination is based on race, color, religion, sex (including gender identity or pregnancy), national origin, disability, political affiliation, marital status, membership in an employee organization, age, sexual orientation, or other non-merit factors. Agencies should review their anti-discrimination policies to ensure that they afford a non-discriminatory working environment to employees irrespective of their gender identity or perceived gender non-conformity.

The purpose of this memorandum is to provide guidance to address some of the common questions that agencies have raised with OPM regarding the employment of transgender individuals in the federal workplace. Because the guidance is of necessity general in nature, managers, supervisors, and transitioning employees should feel free to consult with their human resources offices and with the Office of Personnel Management to seek advice in individual circumstances.

Core Concepts

Gender identity is the individual's internal sense of being male or female. The way an individual expresses his or her gender identity is frequently called "gender expression," and may or may not conform to social stereotypes associated with a particular gender.

Transgender: Transgender individuals are people with a gender identity that is different from the sex assigned to them at birth. Someone who was assigned the male sex at birth but who identifies as female is a *transgender woman*. Likewise, a person assigned the female sex at birth but who identifies as male is a *transgender man*. Some individuals who would fit this definition of transgender do not identify themselves as such, and identify simply as men and women, consistent with their gender identity. The guidance discussed in this memorandum applies whether or not a particular individual self-identifies as transgender.

Transition: Some individuals will find it necessary to transition from living and working as one gender to another. These individuals often seek some form of medical treatment such as

counseling, hormone therapy, electrolysis, and reassignment surgery. These treatments may be deemed medically necessary for many individuals, based on determinations of their medical providers. Some individuals, however, will not pursue some (or any) forms of medical treatment because of their age, medical condition, lack of funds, or other personal circumstances, or because they may not feel the treatment is necessary for their well-being. Managers and supervisors should be aware that not all transgender individuals will follow the same pattern, but they all are entitled to the same consideration as they undertake the transition steps deemed appropriate for them, and should all be treated with dignity and respect.

Transition While Employed

There are several issues that commonly generate questions from managers and employees who are working with a transitioning employee. In order to assist you in ensuring that transitioning employees are treated with dignity and respect, we offer the following guidance on those issues.

Confidentiality and Privacy: An employee's transition should be treated with as much sensitivity and confidentiality as any other employee's significant life experiences, such as hospitalization or family difficulties. Employees in transition often want as little publicity about their transition as possible. They may be concerned about safety and employment issues if other people or employers become aware that he or she has transitioned. Moreover, medical information received about individual employees is protected under the Privacy Act (5 U.S.C. 552a).

Employing agencies, managers, and supervisors should be sensitive to these special concerns and advise employees not to spread information concerning the employee who is in transition: gossip and rumor-spreading in the workplace about gender identity are inappropriate. Other employees may be given only general information about the employee's transition; personal information about the employee should be considered confidential and should not be released without the employee's prior agreement. Questions regarding the employee should be referred to the employee himself or herself. It should be noted, however, that questions regarding a coworker's medical process, body, and sexuality are inappropriate. If it would be helpful and appropriate, employing agencies may have a trainer or presenter meet with employees to answer general questions regarding gender identity. Issues that may arise should be discussed as soon as possible confidentially between the employee and his or her managers and supervisors.

Dress and Appearance: Agencies are encouraged to evaluate, and consider eliminating, gender-specific dress and appearance rules. Once an employee has informed management that he or she is transitioning, 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. Dress codes should not be used to prevent a transgender employee from living full-time in the role consistent with his or her gender identity.

Names and Pronouns: Managers, supervisors, and coworkers should use the name and pronouns appropriate to the gender the employee is now presenting at work. Further, managers, supervisors, and coworkers should take care to use the correct name and pronouns in employee records and in communications with others regarding the employee. Continued intentional

misuse of the employee's new name and pronouns, and reference to the employee's former gender by managers, supervisors, or coworkers is contrary to the goal of treating transitioning employees with dignity and respect, and creates an unwelcoming work environment. Such misuse may also breach the employee's privacy.

Sanitary and Related Facilities: The Department of Labor's Occupational Safety and Health Administration (DOL/OSHA) guidelines require agencies to make access to adequate sanitary facilities as free as possible for all employees in order to avoid serious health consequences. For a transitioning employee, this means that, once he or she has begun working in the gender that reflects his or her gender identity, agencies should allow access to restrooms and (if provided to other employees) locker room facilities consistent with his or her gender identity. Transitioning employees should not be required to have undergone or to provide proof of any particular medical procedure (including gender reassignment surgery) in order to have access to facilities designated for use by a particular gender. Under no circumstances may an agency require an employee to use facilities that are unsanitary, potentially unsafe for the employee, located at an unreasonable distance from the employee's work station, or that are inconsistent with the employee's gender identity. Agencies are encouraged to provide unisex, single-user restrooms when feasible to maximize comfort and access for everyone, including individuals with disabilities and those with young children, however transgender employees should not be limited to using these facilities. Because every workplace is configured differently, agencies with questions regarding employee access to any facilities within an agency may contact OPM for further guidance.

Workplace assignments and duties: In some workplaces, specific assignments or duties are differentiated by gender. For a transitioning employee, once he or she has begun working full-time in the gender that reflects his or her gender identity, agencies should treat the employee as that gender for purposes of all job assignments and duties. Transitioning employees should not be required to have undergone or to provide proof of any particular medical procedure (including gender reassignment surgery) in order to be eligible for gender-specific assignments or duties. Under no circumstances may an agency require an employee to accept a gender-specific assignment or duty contrary to the gender the employee otherwise works as, or limit gender-specific assignments or duties for an employee once the employee's Official Personnel Folder (OPF) has been reconstructed to reflect the new gender.

Recordkeeping: Consistent with the Privacy Act, the records in the employee's Official Personnel Folder (OPF) and other employee records (pay accounts, training records, benefits documents, and so on) should be changed to show the employee's new name and gender, once the employee has begun working full-time in the gender role consistent with the employee's gender identity and has submitted a request to update his or her OPF.

Sick and medical leave: Employees receiving treatment as part of their transition may use sick leave under applicable regulations. Employees who are qualified under the Family Medical Leave Act may also be entitled to take medical leave for transition-related needs of their families.

Hiring process: During the hiring process, hiring managers and supervisors should be sensitive

to the possibility that applicants have transitioned. The name and gender on the application may correspond with the person's current usage; however, background or suitability checks may disclose a previous name that indicates a gender different from the one the applicant is currently presenting. In such cases, hiring managers should respectfully ask whether the applicant was previously known by a different name, and confirm with the applicant the name and gender that should be used throughout the hiring process.

Insurance Benefits: Employees in transition who already have Federal insurance benefits must be allowed to continue their participation, and new employees must be allowed to elect participation, based on their updated names and genders. If the employees in transition are validly married at the time of the transition, the transition does not affect the validity of that marriage, and spousal coverage should be extended or continued even though the employee in transition has a new name and gender.

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