

Guidelines for Nonprofits Employing and Serving Transgender Individuals



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To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

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In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

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Agenda

- A Little Background
 - Getting the language right is important!
- Legal Standard
 - Some big changes in the last year or so!
- Organizational Tips

Some Vocabulary....

- “Transgender” - is a general term used to describe people whose gender identity differs from the sex they were assigned at birth.
- “Transsexual” - An older term referring to a person who does not identify with the sex they were assigned at birth and wishes, whether successfully or not, to realign their gender and their sex through use of medical intervention.
- “Gender nonconforming” - refers to people who do not follow other people’s ideas or stereotypes about how they should look or act based on the female or male sex they were assigned at birth.
- “Gender Questioning” - People who are questioning their gender identity might be wondering whether they identify as a boy, a girl or another gender. They might also be experimenting with different genders.

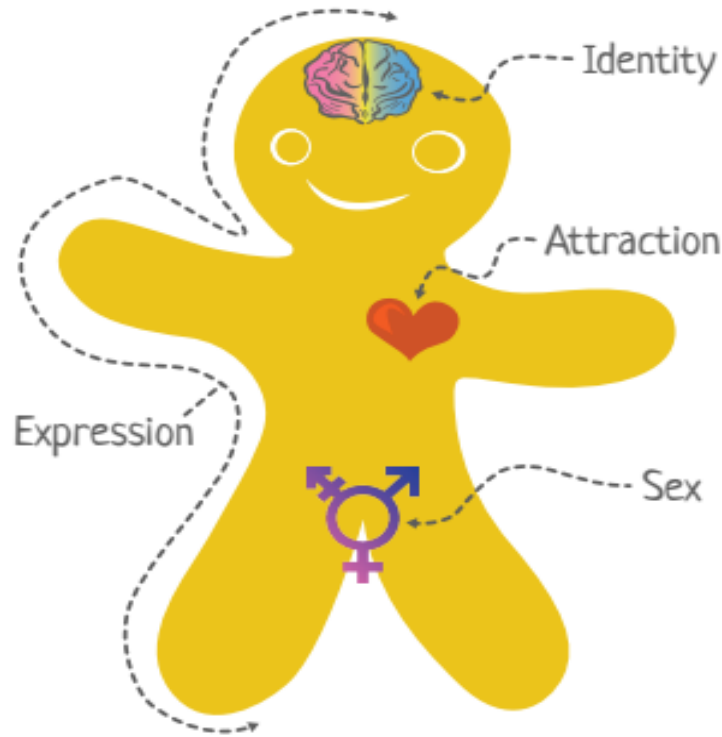
A Little More...

- Cisgender, or cis --A person whose gender identity matches the gender they were assigned at birth.
- Crossdresser --Someone who wears clothes associated with a different gender. This activity may be a form of gender expression. Many crossdressers may not wish to present as a different gender all of the time. (NOTE: Avoid using the term “transvestite.”)
- Intersex --Someone who, due to a variety of factors, has reproductive or sexual anatomy that do not seem to fit the typical definitions for the female or male sex. Some people who are intersex may identify with the gender assigned to them at birth, while many others do not.
- Nonbinary --A person who's gender identity does not conform to only two distinct and opposite genders, i.e., male and female. Some nonbinary people identify with more than one gender, while others don't identify with any.
- Queer --In a very basic sense, anyone who is not heterosexual and/or cisgender. The term is increasingly being used to describe all identities and politics that go against

Transgender

- A “Transgender Female” or “Transgender Woman” lives as a woman today, but was thought to be male when she was born.
- A “Transgender Male” or “Transgender Man” lives as a man today, but was thought to be female when he was born.

The Genderbread Person v4 by its pronounced METROsexual.com



⊖ means a lack of what's on the right side

Gender Identity

-  Woman-ness
-  Man-ness

Gender Expression

-  Femininity
-  Masculinity



Anatomical Sex

-  Female-ness
-  Male-ness



Identity ≠ Expression ≠ Sex
Gender ≠ Sexual Orientation

Sex Assigned At Birth
 Female Intersex Male

Sexually Attracted to... and/or (a/o)

-  Women a/o Feminine a/o Female People
-  Men a/o Masculine a/o Male People

Romantically Attracted to...

-  Women a/o Feminine a/o Female People
-  Men a/o Masculine a/o Male People

Legal Background

- On January 20, 2021, President Biden issued Executive Order (EO) on Preventing and Combating Discrimination Based on Gender Identity or Sexual Orientation.
- The Executive Order asserts that “[a]ll persons should receive equal treatment under the law without regard to their gender identity or sexual orientation”.
- While the EO does not specifically rescind any specific order or action, its broad mandate that agencies review existing programs and policies likely will lead to updated guidance, enforcement priorities, and rules implementing Title IX and other laws prohibiting sex discrimination.

Legal Background

- The EO bases its assertions on Title VII of the Civil Rights Act of 1964 and the Supreme Court's recent case of *Bostock v. Clayton County*, which held that Title VII's prohibition against "sex discrimination" includes a prohibition against discrimination based on sexual orientation and gender identity.
- The EO asserts that *Bostock's* reasoning also applies to other laws, including Title IX, that prohibit sex discrimination.

Bostock Principles

Courts have been struggling with the meaning of “sex” in Title VII for a couple of decades!

So many laws prohibit discrimination on the basis of “sex”. But what IS sex?

- Title VII prohibits discrimination based on “sex.” The question has been whether discrimination based on “sex” include discrimination based on sexual orientation.
- The U.S. Supreme Court answered this question in *Bostock v. Clayton County*.

Bostock Principles

In this decision, the Supreme Court addressed three consolidated cases

- In *Bostock v. Clayton County*, Gerald Bostock, a gay man, was fired for “conduct unbecoming of a county employee” after participating in a gay softball league.
- In *Altitude Express, Inc. v. Zarda*, Donald Zarda was fired shortly after revealing to a customer that he was gay.
- In *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission*, an employee who had previously presented herself as male was fired after notifying her employer that she planned to begin presenting as female in

Bostock Principles

- The Supreme Court faced the issue of whether Title VII's ban on discrimination "because of sex" covered sexual orientation and gender identity.
 - Ultimately, the Supreme Court decided that both were included in Title VII's prohibition on sex discrimination.
- Writing for the majority, Justice Gorsuch held that: "An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

Legal Takeaways

- Extends the employment protections of Title VII to every LGBTQ worker, making it illegal for employers to discriminate against an employee merely for being gay or transgender.
- Review employment policies and procedures to ensure they align with the Supreme Court's decision.
- Update your policies and procedures to acknowledge anti-discrimination protections for gay and transgender employees, volunteers, and recipients.
- Further, ensure that these policies and procedures are actually implemented. Human resources staff, in particular, should be well-versed

Organizational Points: Names and Pronouns

- Use names and pronouns consistent with a person's gender identity, regardless of whether records indicate a different name or sex
- Legal name remains on all official records unless a legal name change is obtained
- What's legal name change? Could be a court order, official documentation like a birth certificate or passport—please ask!

Organizational Points: Conversations

- Not sure? Ask!
- Open dialogue is important
- Ensure that the person has a place to go with concerns, questions, etc.
 - Consider an organizational advocate or ally

Organizational Points: Minors

- Parent/Child makes request for support/accommodation
- Appropriate person schedules meeting with child and their parent(s)/guardian(s) and pertinent personnel to learn about specific requests
- Personnel then provides appropriate menu of supports and accommodations to the family
- What if the minor and parent(s)/guardian(s) disagree?
 - Work with the parties to come to a neutral ground
 - Ultimately, parent(s)/guardian(s) control
 - If parent(s)/guardian(s) disagree, court order

Organizational Points: Privacy

- Be mindful of privacy.
- A person's transgender status should only be shared with staff members who need to know.
- Do not share information with other individuals unless disclosure is allowed by law.

Organizational Points: Restrooms

- Individuals should be permitted to use the restroom aligned with their consistent gender identity.
- Consider designating some gender-neutral restrooms for individuals who are gender fluid or non-binary.
- Privacy: this is not a matter to discuss with other individuals or to which you must alert other individuals.
 - However, consider making accommodation for all participants that promote privacy (curtains, partitions, etc.)

Organizational Points: Housing

- Individuals should be permitted to use housing aligned with their consistent gender identity.
- Consider designating individual housing for individuals who prefer or who are fluid or non-binary.
 - This housing should not be at an additional cost.
- Privacy: this is not a matter to discuss with other individuals or to which you must alert other individuals.
 - Be flexible—look for allies
 - Consider physical accommodations that promote privacy (partitions, curtains, etc.)

Organizational Points: Policy

- Integrate sexual orientation/gender identity into already-existing nondiscrimination policies, practices, and training modules
- Having delineated processes and policies assists your organization in compliance.
- Protects your organization.
- Provides organizational memory.
- Provides consistency.

Organizational Points: Training

- Ensuring that all volunteer and staff understand your policies, procedures and practices is vital
- Consider having:
 - Onboard training, with a signature for receipt
 - Yearly update training, with a signature of participation

Questions?

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