

GENDER RECOGNITION

The issues around gender recognition are becoming increasingly complex. What it means and how those who are transgender should be treated is set out below.

Please note that whilst The Equality Act 2010 refers to someone changing their gender as transsexual, we recognise this term may be considered as outdated and so the term transgender will be used throughout this factsheet.

What the law says

The Equality Act 2010 (the Act) protects anyone who is transgender. If the gender identity of an individual differs from the gender they were born with, this is known as gender reassignment and that person is transgender. Under the Act this is a protected characteristic. In other words, they have protection against acts of discrimination and must not be discriminated against because of the change in their gender.

To qualify for protection the individual must either:

- propose to undergo a transgender process
- be undergoing a transgender process
- have completed a transgender process

In any of these circumstances, there is no requirement to have any medical supervision or undergo any specific surgery or medical procedure.

This is because undergoing a transgender process is a personal transition involving a change in the attributes assigned to an individual's birth gender.

As a transgender person they must not be discriminated against because:

- they are proposing, undergoing or have undergone the transgender process
- someone believes they are transgender, perhaps because they sometimes dress in clothes different to those of their birth gender
- they are associated with, or connected to, a transgender person or someone who is perceived to be transgender

If an individual is treated differently for any of these reasons it may be that they have been discriminated against. The treatment can be one-off or it can be continuing and does not have to be intentional. However, there are circumstances when being treated differently due to gender reassignment may not be unlawful. Such circumstances may include:

• **Competitive sports**

Where a sport organisation decides to restrict entry into teams or events where an entrant has undergone gender reassignment it may not be unlawful. It may be thought, for example, that a transgender woman may have a speed or strength advantage over other teams or entrants.

• **Single-sex service**

Where a service is provided exclusively to one gender it may not be unlawful to exclude someone of the opposite sex i.e. access to a women's refuge.

However, the service provider would have to be able to justify in law why the service was not provided to that transgen-der person at that time.

This is known as a 'proportionate way of achieving a legitimate aim' or a good enough reason. In other words, it would need to be shown that the action was balanced against any disadvantage that the transgender person may have suffered.

Some Frequently asked Questions:

Does an employee have to tell their employer they are transgender?

There is no requirement under the Act for any employee to tell their employer of their gender reassignment status. It is not therefore necessary for anyone to tell their employer they propose to undergo the transgender process. However, this does mean it may be difficult for an employer to be aware when that process actually starts and therefore be able to offer any support at that time. Realistically, changes in physical characteristics and/or dress may well indicate that the process is underway. At that point it may be useful to discuss any changes with the employee.

Does an employer have to provide separate changing and toilet facilities?

The issue of toilet and changing facilities is one of the most difficult to resolve in the workplace, often due to objections raised by other members of staff.

As soon as an individual decides to live permanently in the opposite gender, whether or not they complete any medical procedure or obtain a gender recognition certificate, a change of changing and toilet facilities should be considered. It is potentially discriminatory to expect someone in their acquired gender to have to use facilities of their birth sex or be restricted to using other accessible facilities.

If there are open changing facilities, including showers, consideration should be given to ensuring suitable privacy for all members of staff.

Is an employee suffering with gender dysphoria classed as disabled under the Act?

Gender dysphoria is a condition where an individual suffers significant distress with the gender they were assigned at birth. It is unlikely this condition itself is a disability and will not therefore qualify as a disability under the Act.

However, should if the employee suffers with depression/anxiety as a result of this condition, or has long-term side effects from any surgery or medication, those conditions could themselves become a disability resulting in additional protection under the Act.

Is an employee entitled to time of for reassignment surgery?

Gender reassignment surgery should be treated the same as any other surgical process for which absence is lawful. Furthermore, it is specifically provided within the Act that if anyone undergoing such surgery, should be treated no less favourably than someone who was absent from work due to other sickness or injury.

Gender recognition certificate (GRC)

The Gender Recognition Act 2004 enables transsexual people to have their acquired gender legally recognised. To do this they will have to apply to the gender recognition panel, see [here](#), and show that they:

- are over 18
- have, or have had, gender dysphoria
- have lived in the acquired gender for at least two years prior to the date of the application
- intend to live in the acquired gender until death
- are not married or living in a civil partnership

It is not a requirement of the application that they should have undergone surgery or any other medical intervention. If the application is successful, they will be granted a GRC and will be recognised in their new acquired gender. As such, they will benefit from rights and responsibilities associated

with that gender. They will also be entitled to a new birth certificate and be able to marry someone of the opposite sex to that of the acquired gender.

Differing gender terminology

Sometimes we receive enquiries from individuals who refer to themselves as 'non-binary', 'pan' gender or 'fluid' gender. Non-binary gender is often used to describe someone who does not identify themselves as male or female.

Someone who has a fluid gender is someone who identifies with a particular gender but that may change or vary over time. For example, they may identify as female some days and male at other times, with a variation at random affected by different circumstances.

To identify as pan gender an individual may consider themselves capable of identifying and able to form relationships with all genders.

There is no automatic protection under the Act for people identifying as being in any of these categories, unless they are also transgender or suffering with a disability.

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