

Good practice for law firms on creating a trans inclusive workplace

Published 14 November 2019 | Updated 5 July 2021

Who is this information for?

All law firms we authorise.

Purpose of this information

This information sets out good practice on trans and non-binary inclusion. It provides information about ways in which you can comply with Principle 6 - encouraging equality, diversity and inclusion - in relation to trans and non-binary inclusion.

Some of the things you may wish to think about include:

- use of terminology
- producing a trans and non-binary inclusion statement
- drafting a policy
- using inclusive language
- engaging with staff
- looking at your facilities and dress code
- diversity monitoring.

General

This information is focused on good practice in promoting trans and non-binary inclusion in the workplace. You should encourage and promote an inclusive workplace culture and provide equality of opportunity to all staff. This means encouraging a welcoming environment in which all staff can meet their full potential and are treated as individuals.

The Equality Act 2010 offers protection to people defined by the protected characteristic of 'gender reassignment'¹ ^[#n1] and people having this characteristic are referred to in the Act as 'transsexual'. It also covers people who identify as non-binary and gender fluid² ^[#n2]. Many people are not comfortable with the terminology used in the Equality Act, so we are using the broader terms 'trans and non-binary inclusion' - see the section

on terminology below – but when considering your legal responsibilities, you will need to refer to the definitions in the Equality Act.

A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

Your obligations

Your legal obligations are set out under the Equality Act 2010 and other legislation such as the Gender Recognition Act 2004. Your regulatory obligations are set out in the SRA Principles, in particular Principle 6 'to encourage equality, diversity and inclusion' and our Standards and Regulations. We provide guidance about Our approach to equality, diversity and inclusion [<https://www.sra.org.uk/solicitors/guidance/sra-approach-equality-diversity-inclusion/>] .

What you can do

Explain the terminology

Accepted terminology changes over time, so make it clear what you mean by the terms you use. The terms used in this guide are set out below:

Gender expression – how you outwardly present your gender identity.

Gender fluid – a person whose gender identity is not fixed and may change over time.

Gender identity – a person's innate sense of their own gender (as a man, a woman, as non-binary or something else) which may or may not correspond to their sex assigned at birth.

Non-binary - an umbrella term for people whose gender identity does not sit comfortably with 'man' or 'woman'. Non-binary identities are varied and can include people who identify with some aspects of binary identities, while others reject them entirely.

Sex – the protected characteristics of sex under the Equality Act are male and female, and under the law we are all assigned a sex at birth depending on our biological sex characteristics and reproductive functions.

Trans - an umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth, used here in its broadest sense, respectfully including people who prefer to use other ways to describe their gender identity.

Transitioning - the term used to describe the process someone goes through to change their gender expression or sex to match with their internal sense of gender identity, with or without medical intervention. Everyone is different, some people will transition to their preferred gender full-time, some may choose to live in their preferred gender part-time, and others may identify as non-binary or in some other way. Some people will choose to undergo surgery or have other medical interventions and others will choose not to.

Making sure you use the right terminology will help you demonstrate to your staff that you are inclusive.

Produce a statement

Your firm can put in place a simple but comprehensive statement about trans and non-binary equality and inclusion. A statement gives you the opportunity to clearly set out your commitment to the inclusion of all trans and non-binary people. It could also include a statement that discrimination and harassment against trans and non-binary people will not be tolerated. It sends a message to prospective and existing staff and clients that everyone should be treated with dignity and respect.

The statement may also include information about how your firm will benefit from working with and employing trans and non-binary people at all levels of seniority. And that you will work with your trans and non-binary staff to provide appropriate support.

Draft and implement a policy

A policy on trans and non-binary equality and inclusion can also cover how you will support someone transitioning at work, and how you will help them through the process. This will provide reassurance for all your staff and lets them know this is something you take seriously. A policy will clarify your responsibilities towards staff who identify as trans and non-binary and makes clear the support you can offer to them and their managers.

A policy can also provide assurance about how you will handle confidentiality, for example, respecting the privacy of trans and non-binary staff and not revealing information about their gender identity without their prior agreement.

The policy may also include information about your approach to the use of toilet and bathroom facilities and your dress code (see below).

Alternatively, you could include information about trans and non-binary inclusion in an existing equality and diversity policy. If you do this, use inclusive language throughout the policy and make specific reference to

trans and non-binary and inclusion alongside the other characteristics covered by your policy.

Use inclusive language

You can remove gendered language from all your policies and communications. This is an important way to confirm your commitment to trans and non-binary equality and promote inclusiveness.

Gender neutral language which may stereotype people according to their sex can be avoided. For example, you can use the term 'chair' instead of 'chairman'. Another example is using 'people' instead of men/women. When writing letters, instead of using 'Dear Sir / Madam', think about using the name of the firm or organisation to which the letter is addressed.

It is not always necessary to use the pronouns he/she or his/her. Instead you can use they/their. You could encourage staff to share their preferred pronouns, for example on their email signatures, indicating that your firm is open and inclusive in its approach.

It would be good practice to make sure your systems allow people to use preferred titles, or not use titles at all. You could allow people to use the gender-neutral title 'Mx' for example, which is used by the Government and other organisations. If you wish to do so, you can remove reference to all titles and use a person's first name and last name in place of this.

If you are not sure about someone's sex or gender identity, it is better keep your language neutral until you know what terms they prefer to use.

Engage with your staff

There are several of ways to inform and engage with staff and colleagues. You could provide training or facilitate an event. If the firm has a network for lesbian, gay, bi, and trans (LGBT) staff, they may help you communicate to wider staff about trans and non-binary equality and inclusion. This can help build knowledge, open a discussion and allow staff to ask questions.

Learning about trans and non-binary people helps to avoid making assumptions. It will raise awareness and helps make sure your firm treats all people in an inclusive and non-discriminatory way.

Having active role models and allies in place will be helpful. It usually works best if the role model or ally is a senior manager or partner of the firm and is visible about their commitment to trans and non-binary equality. Role models or allies might wish to host or chair a trans or non-binary specific workshop or seminar or publish an article as part of a regular internal communications bulletin.

Anyone in the firm can be a role model but you should never pressurise your trans or non-binary staff to be out or to be a visible role model if they do not wish to do so. Confidentiality is crucial and it is important not to inadvertently 'out' someone, without their permission.

Facilities and dress code

You should make sure that trans and non-binary staff have access to appropriate facilities without challenge from others. This needs to be handled carefully, respecting the feelings of all staff in your workplace. It is good practice to provide at least one set of gender neutral toilet facilities for staff, clients and visitors if you can.

If you already have separate lockable units with private washing facilities, you may consider something as simple as setting some of these units aside and making them gender neutral by changing the signage.

It is good practice to have a dress code which is not gender-specific, so staff can dress in a way that is appropriate for your firm. Trans and non-binary staff should be able to dress in a way that complies with your dress code but aligns with their gender identity and you can help staff manage this if they are transitioning.

Diversity monitoring

Law firms are required to collect and report diversity data about sex and gender identity, using the questions set by the SRA. You can read more about our regulatory requirements for law firms to collect, report and publish diversity data [<https://www.sra.org.uk/solicitors/resources/diversity-toolkit/your-data/>] on our website.

Diversity monitoring can help you understand the needs of your trans and non-binary staff and highlight areas for improvement. Use your monitoring data to make sure you are inclusive and to demonstrate your commitment to equality and diversity.

Explain to your staff why you are asking these questions and what will happen to the information that is gathered. Trans and non-binary staff are more likely to disclose information about themselves if a firm demonstrates it is trans and non-binary inclusive. This can be demonstrated by implementing a policy to promote trans and non-binary inclusion or by updating existing equality policies.

Make sure you have protocols in place with regards to data protection, anonymity and confidentiality and never publish any information which could identify an individual who has identified as trans or non-binary

You may also wish to consider providing specific training to staff who handle enquiries about diversity monitoring forms or process the data

collected so that data is:

- held securely and confidentially
- obtained fairly and efficiently
- recorded accurately and reliably
- used effectively and ethically
- shared appropriately and lawfully.

Records

If a staff member is transitioning, their staff records should be changed at a mutually agreed time to reflect their preferred gender identity, name, title and pronouns. Records should not be changed without the permission of the individual concerned.

Records that reveal a person has transitioned must be properly protected. You should consider what paper records you hold and whether these should be replaced, and the old ones destroyed or removed and held securely.

You have duties to keep such information confidential and an obligation to comply with your legal requirements, including the Gender Recognition Act and data protection legislation.

Further help

If you require further assistance, please contact the Professional Ethics helpline [<https://www.sra.org.uk/contactus>] .

Notes

1. A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.
2. Taylor v Jaguar Land Rover Ltd (case 13044471/2018 (30 November 2020, unreported) ET