

Legal Update Article

March 31 is International Transgender Day of Visibility

By Michelle E. Phillips,

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Gender identity, transgender status, gender non-conformance, and workplace gender transitions are timely topics, both societally and within workplaces. March 31 is International Transgender Day of Visibility, which aims to celebrate transgender people and raise awareness of discrimination faced by them. Jackson Lewis has been fortunate to assist a number of clients with workplace gender transition issues — including drafting policies, creating educational materials, developing and conducting training for managers and co-employees, and preparing individual transition plans.

The most successful and competitive employers recognize that promoting an inclusive workplace where employees feel respected and safe and one in which they can bring their whole selves is good business. Further, under many state and local laws, and for federal contractors, non-discrimination and anti-harassment based on gender identity, transgender status, and gender non-conformance are legally mandated. Several federal courts have interpreted Title VII of the Civil Rights Act's prohibition against sex discrimination to prohibit discrimination based on gender identity and transgender status; the U.S. Supreme Court is expected to take up the issue soon.

Preparation, education, and training are the most effective tools employers can use to facilitate workplace gender transitions and to raise awareness of gender non-conforming designations. Employers should start by reviewing their equal employment opportunity/non-discrimination and anti-harassment policies to determine whether legal obligations, or competitive imperative, demand that gender identity and transgender status be included in the policies.

Providing training and education focused on gender identity, sex stereotypes, and transgender status to a transitioning employee's managers and co-employees is essential to a successful transition and to avoiding discrimination and harassment in the workplace. Employers need not (and probably should not) wait until an employee is transitioning to implement a plan. Early training and education will smooth the way for future situations and send a message that the organization values and appreciates diversity and promotes an inclusive work environment. At a minimum, include discussions of transgender/gender non-conforming non-discrimination and anti-harassment in on-going anti-harassment training. (California and New York require this by law.)

Often, in the early stages of an employee's transitioning process, we are unaware that someone in the workplace is considering a gender transition. Therefore, it is best to proactively create a pathway for employees to notify and work confidentially with human resources (and, perhaps, others in the organization) to facilitate the education, training, and logistics that must be coordinated to make a smooth transition. Jackson Lewis provides policies, training, counsel, and assistance on a full range of workplace issues. If you need assistance navigating a workplace gender transition or other workplace issues, let us help.

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