

11. WILL AN EMPLOYER WHO RUNS A BACKGROUND CHECK FIND OUT THAT I AM TRANSGENDER? Quite possibly, depending upon how extensive the background check is. It is very difficult in this day and age for a person to remain “stealth.” This is because employers may have access to databases tied to a person’s social security number, which may contain information about previous name and gender information. For background checks, California law prohibits any non-job-related inquiries made by potential employers. Employers who are conducting a background check must provide you with written notice that it is being performed, and upon completion of the investigation, provide you with a copy.

12. CAN A POTENTIAL EMPLOYER VIEW MY MEDICAL RECORDS? No. In California, medical records are confidential and there are only a few instances where they can be released without your knowledge or consent – such as if your potential job duties are related to your anatomy. In most cases, medical records are strictly protected by HIPAA and other privacy laws.

13. CAN A POTENTIAL EMPLOYER ASK MY OLD EMPLOYER ABOUT MY TRANSGENDER STATUS? No. A potential employer’s inquiries can only be about job performance-related topics.

14. DOES MY EMPLOYMENT-OFFERED HEALTH INSURANCE HAVE TO COVER TRANSITION-RELATED CARE? State law prohibits California employers from offering health insurance policies to employees that have specific exclusions for gender transition-related care. This law does not apply to employers that offer “self-funded” health plans (which seem like, but are not insurance policies); the law also does not apply to employers that have offices in California but are based and purchase and administer insurance policies out of state. Sometimes it can be difficult to know what kind of plan or policy your employer has and where it was purchased. If you get denied health coverage because you are transgender, you can contact Transgender Law Center for information about your options for appealing that denial. You can also contact the California Department of Managed Health Care at 888.466.2219 or the California Department of Insurance at 800.927.4357 who can help figure out what kind of plan you have.

WHAT CAN I DO IF I THINK I HAVE BEEN DISCRIMINATED AGAINST ON THE BASIS OF MY GENDER IDENTITY?

A good first step is to make a formal complaint to your employer through an internal complaint process. This gives the employer a chance to stop the discrimination before it becomes worse. It also creates a record that the employee tried to resolve the situation before seeking legal action.

You also may want to make a complaint to the California Department of Fair Employment and Housing (DFEH). A person must file a complaint with the DFEH before they can sue their employer for discrimination. In general, the DFEH will interview the employee about what happened and may assign an investigator to contact the employer. Please keep in mind that a complaint must be filed with the DFEH within one year from the last act of discrimination. Contact the DFEH at 800.884.684 or www.dfeh.ca.gov.

Employment discrimination based on gender identity is also prohibited by Title VII, the federal employment discrimination law. You also have the option to make a complaint directly with the U.S. Equal Employment Commission (EEOC), or ask the DFEH to “dual file” the complaint with the EEOC. Please note that to make a complaint with the EEOC, your employer must have at least 15 employees. To learn how to file an EEOC complaint visit www.eeoc.gov.

Depending on where you live, you may also be able to file a complaint with your local human rights agency.

For more information about your rights please contact Transgender Law Center at www.transgenderlawcenter.org/help.

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Know Your Rights: Transgender People at Work

*An information and resource publication
for transgender employees in California*



Know Your Rights: Transgender People at Work

1. WHAT ARE MY RIGHTS AS A TRANSGENDER

EMPLOYEE? In California, it is unlawful for an employer with five or more employees to discriminate against an employee in the terms, conditions, and privileges of employment based upon the employee's gender identity, expression, or transgender status. Discrimination might take place during the hiring process, during employment, or in a wrongful termination. It is also unlawful for an employer, regardless of the number of employees, to verbally or physically harass an employee based on their gender identity, gender expression, or transgender status. Harassment can include intentionally and repeatedly referring to a transgender employee by an incorrect name and pronoun. Coworkers are also prohibited from harassing and discriminating against an employee based upon their transgender status. These kinds of discrimination are also prohibited by federal law for employers of 15 or more employees.

2. DO I HAVE THE RIGHT TO USE THE RESTROOM OF THE

GENDER I IDENTIFY WITH? Yes. All employees have a right to safe and appropriate restroom facilities. This includes the right to use a restroom that corresponds with the employee's gender identity, regardless of the employee's assigned sex at birth. It is also unlawful for an employer to condition appropriate restroom access upon "proof" of medical transition, or to require the transgender employee to provide a court order for gender change or amended birth certificate, unless all employees are asked to provide such documents to access the restroom.

In addition, where possible, an employer should provide an easily accessible unisex single stall bathroom for use by any employee who desires increased privacy, regardless of the underlying reason. A private restroom of this type can also be used by an employee who does not want to share a restroom with a transgender coworker. However, use of a unisex single stall restroom should always be a matter of choice. No employee should be forced to use one either as a matter of policy or due to continuing harassment in a gender-appropriate facility.

3. DO I HAVE THE RIGHT TO BE CALLED BY MY PREFERRED NAME, EVEN IF I HAVE NOT HAD A LEGAL NAME CHANGE?

Yes. An employee has the right to be addressed by the name and pronoun that corresponds to the employee's gender identity. While some employers may mistakenly believe that an employee must get a court order to legally change the employee's name, this is not correct. California recognizes "common law" name changes for most people in the state.

However, as a practical matter, an employer may require a court order before they change an employee's name on payroll records or with regard to certain types of security clearances that require verification of identity. To be on the safe side, it is always a good idea to get a court ordered name change so that all your employment records match.

4. DO I HAVE THE RIGHT TO BE ADDRESSED BY THE PRONOUN I PREFER?

Yes. While state law does not necessarily prohibit other employees from making inadvertent slips or honest mistakes about a person's gender, it does outlaw a coworker or employee's intentional or persistent refusal to respect another employer's gender identity. Intentionally addressing a coworker or employee by the wrong pronoun after having been informed of that person's gender identity is illegal harassment.

5. WHAT IF THERE IS A DRESS CODE?

California law explicitly prohibits an employer from denying an employee the right to dress in a manner suitable for that employee's gender identity. An employer who requires a dress code must enforce it in a non-discriminatory manner. This means, for instance, that a transgender woman must be allowed to dress in the same manner as non-transgender women, and that her compliance with such a dress code cannot be judged more harshly than non-transgender women.

6. WHAT IF THERE ARE SEX-SEGREGATED JOBS DUTIES?

An employer can make job assignments based on sex so long as those assignments are otherwise in compliance with state law. A transgender employee should be allowed to serve in a sex-segregated jobs based on their gender identity.

7. WHAT RIGHTS DO I HAVE WHEN I AM TRANSITIONING

ON THE JOB? A transgender employee who is transitioning on the job has the right to be treated with dignity and respect during the process, as well as the right to be treated in a manner equal to other non-transgender employees.

Many transitioning employees have concerns regarding their medical privacy. An employer must treat information about an employee's gender transition as confidential, which means not sharing details with other coworkers and supervisors. As a practical matter, though, coworkers (and likely management) will be aware of a name and gender change and may have questions. As a result, you may want to create a "transition plan" with your employer to help your transition go smoothly. Such a plan would include information about when a person's name will be changed on important records and email accounts, as well as ensuring appropriate restroom access. Transgender Law Center's Model Employer Policy includes a sample transition plan. See www.transgenderlawcenter.org/issues

8. DO I HAVE TO ANSWER QUESTIONS ABOUT MY BODY, SUCH AS WHETHER I AM HAVING SURGERY OR NOT?

No. This information is protected by the federal Health Insurance Portability and Accountability Act (HIPAA). One exception is if the details of your anatomy are somehow related to your job. But otherwise, you cannot be required to discuss the medical details of your transition.

9. CAN I TAKE MEDICAL LEAVE TO HAVE SURGERY DURING MY TRANSITION?

Yes. An employee can take medical leave for transition-related surgery on the same terms as they could take leave for any other medically necessary condition. Please note that an eligible employee may be required to follow the procedures outlined in the California Family Rights Act (CFRA) for an extended leave, including providing your employer with a doctor's note. The note does not have to state the specific medical procedure you plan to obtain.

10. DO I HAVE TO DISCLOSE MY TRANSGENDER STATUS ON A JOB APPLICATION?

Not specifically. However, a job application may ask for all previous names used in order to run a background check, and if you omit this information or fail to answer it truthfully, you may not be hired and/or may be subject to a penalty.