

Trans Equality at work

A Unite Guide



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Introduction

There are around 400,000 Trans people in the UK and around 290,000 Trans people at work in this country. According to GIRES, employers should assume that 1% of their employees and service users may be experiencing some degree of gender variance¹. A Trans person is someone whom the gender they were born into is not the gender in which they wish to live. Some might choose to undergo the medical process of gender reassignment and some might not.

Despite changes in the law and attitudes in society, many Trans people still face high levels of discrimination and are badly affected by transphobia.²

Unite is committed to ensure there is trans equality in the workplace and that our members are protected against discrimination. This guide explains the issues that can arise in the workplace, the existing legal protection, and identifies union support needed to ensure trans equality in the workplace.

“When it’s right for somebody, it’s the most fulfilling”

If a member decides to go through the medical process then it may include hormones and reconstructive surgery. Before a Trans person is allowed to have surgery they must pass the 'real life test' i.e. they must have been living in their new gender for two years.

“Some want to be trans women or trans men, others women or men – CHOICES”

At some point during this process a person will change their social gender identity, their official documents and begin to live and work as their new gender. The point at which this happens is their 'transition'. This is usually the most likely time when the member will have to deal with issues around their gender role at work.

¹The Number of Gender Variant People in the UK - Update 2011 <http://gires.org.uk/Prevalence2011.pdf>

²Equality and Human Rights, The Trans Research Review
<http://www.equalityhumanrights.com/key-projects/trans-inequalities-reviewed/introduction-to-the-review/>
 Press for Change - Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination
 Transgender Equality Network Ireland- stated that trans people have been known to experience discrimination in the labour market and in accessing treatment. Their recent survey found 43% of trans respondents reported a current personal income of less than €10,000 (£8,620) a year. One quarter of those respondents indicated they are unemployed which is strikingly high.

What can UNITE do to help?

UNITE plays a crucial role to ensure discrimination against our Trans members is prevented and a trans friendly environment is created in all workplaces.

Union reps should make sure that they publicise UNITE Lesbian, Gay, Bisexual and Transgender regional and national structures in their workplaces including displaying posters and leaflets that members can discreetly take home.

All reps have a responsibility to act in an approachable, non-judgemental and confidential way when dealing with trans members' issues, listening to the member and finding out what support they may need in telling the employer and colleagues and remember each case is different.

“Sometimes people avoid you because they are afraid of saying the wrong thing. You need to make sure there is education – reassure people who do sometimes get the pronoun wrong.”

As the situation may not have arisen before, the rep should seek advice from their union officer and the Regional Women's & Equalities Organiser, (particularly if there are any difficult issues to address, including providing access to the UNITE Listening Support Network for any member facing harassment or bullying.)

What issues are likely to arise?

Timescale and Key Stages

A Trans member should discuss their plans with their employers and union rep in strict confidence at as early stage as possible, and agree a plan of action for the workplace covering, for example:

- When and how colleagues (and clients, if relevant) should be told
- When records and names should be changed
- When and how much medical or other leave they will need to take
- When a trans person commences to live in their acquired gender role on a full time basis they should be afforded the right to use the toilet facilities appropriate to the acquired gender role'
- Issues around dress code
- Temporary redeployment

“You put it out there, you get it back”

All parties should be aware that waiting lists may delay the timescale and that this is out of the control of the employee.

Telling colleagues

The employee may be happy to tell colleagues themselves but it is good practice for the employer to offer to do this, possibly in conjunction with the union however, the wishes of the member should be paramount. A face-to-face meeting with colleagues may be difficult but may break the ice, alternatively the employers could issue a written statement. Any announcement should include the name the person now wishes to be known by, and an understanding of the timescale involved.

“At work, can be the best experience but family and friends find it hard”

The employer should provide appropriate trans equality awareness training to avoid the need for staff and colleagues to be left with questions about this issue. Also, managers have to be aware that it should not be left to the trans member to have to answer questions.

It is the employer's responsibility to ensure that the trans employee is protected from harassment and they may need to remind staff of the disciplinary procedures in this area. They should also extend their harassment policies to explicitly cover this.

"Is that all, we thought you had cancer or something"

Medical leave

The Trans member may need several periods of absence if they are undergoing several operations, they may also need to take leave before this to visit a Gender Identity clinic at various intervals. The employer should not treat Trans people less favourably for being absent from work for gender reassignment, even if it exceeds the normal allowance of sick leave. UNITE reps need to negotiate for sufficient paid leave that does not count against the member's work record.

The trans member undergoing transition may also wish to take a short period of leave before coming back to work in their new gender.

Changing records

The employer should update all records and references in agreement with the employee. Currently pension and insurance schemes may need to be informed by the employer. Any records that shows the details associated with the member's transition should only be available on a strictly 'need to know basis'. This means those who are directly involved in the administration of a process eg. personnel.

Sometimes Trans members need to undergo criminal records checks because of the nature of their work. In this case they need to follow a procedure which protects their confidentiality with employers while enabling the necessary checks against previous names³.

Sometimes employment records are kept for long periods and some of these documents may reveal the Trans member's previous gender identity. In these circumstances issues can arise over who should have access to these records and what should be done in the event that someone's previous gender identity is revealed without the person's permission.

It is very important that union representatives seek further advice from their regional officer/regional Women's & Equalities Organiser to ensure the best outcome for the Trans member.

Harassment

Harassment of trans workers and service users is unlawful under the Equality Act 2010. Employers must make sure that there is zero tolerance towards harassment of trans workers. This is especially important, as trans members can be particularly vulnerable to abuse, harassment and bullying in the workplace.

"Nobody does this if it's not very profound; can be very, very extreme"

Unite reps will need to negotiate a harassment policy that includes gender identity, if one does not exist.

³For England and Wales, contact the Sensitive Casework Manager at the Criminal Records Bureau - www.crb.gov.uk – search under transsexual applicants. For Scotland, phone the Disclosure Scotland helpline on 0870 609 6006 and ask to speak to the Operations Manager in confidence. In Northern Ireland, phone the Access Northern Ireland helpline on 02890 259100 or email accessni@ani.x.gsi.gov.uk in confidence.

Disclosure

The trans member's wishes should be fully respected and it should be their decision as what they wish to be disclosed about their present or previous identities. Unite reps need to ensure, through negotiations, that disclosure is not made without the express permission of the member. This becomes particularly important when providing a reference if the member decides to leave his/her job. Disclosing any such information without the consent of the trans member can be a criminal offence.

The Gender Recognition Act (GRA) gives trans people certain privacy rights. Under GRA, anyone who passes information about someone's trans status without their permission is liable to criminal proceedings. This includes a trade union representative who might pass information to, for example, an employer or other union officials.

Redeployment

During the process of transition, the member may wish to be redeployed on a temporary or permanent basis. Unite reps need to support the member to discuss the management of this process with the appropriate manager.

If there are issues of physical strength (Male to female Trans people may experience a decrease in muscular strength) then the employer could provide equipment which would make the work easier for all employees.

Case study

A trans member was working in the chemicals industry, and the UNITE rep spoke to their colleagues about their concerns, giving them an opportunity to ask questions they might not have felt comfortable discussing with the member. This was particularly useful in alleviating concerns about the member using female toilet facilities, which was then agreed by all parties.

Management were supportive of the member's situation and bought a piece of loading equipment to help her carry on her job following a loss of upper body strength (a side effect of treatment) - the equipment benefited everyone in the workplace.

Dress code

The employer should be flexible regarding dress code, including the wearing of make up and jewellery, etc and should understand that for the employee changing their appearance gradually is an important part of the real life test. It is also important that the trans member decides when it is comfortable for him or her to change into the uniform appropriate for their gender.

The employer should pay for any new uniforms, and should not treat the employee any less favourably than other groups.

Use of facilities

This is often one of the most contentious issues. Whilst a Trans person is likely to want to use the facilities of their chosen sex such as toilets, showers or changing rooms, their colleagues may not be happy about this. The employer has a duty to dispel prejudice amongst employees. Whilst an employee may be willing to use separate, unisex or disabled facilities, they should not be compelled to do so, and if forced to do so in the long term this may constitute discrimination even if they have not undergone a gender reassignment operation⁴. Once they have completed their transition to the new gender they should be treated as that gender and should have the right to use the appropriate facilities.

Case study

A trans member working in food and drink warehouse in North West region sought the advice of her rep and officer and had agreed a plan of action with her full time official, making sure that she was the person leading on this. In the meeting with management the union was able to help the member discuss the matter and agree timescales for the transition and a period of leave prior to adopting their new gender.

Management also agreed to hold a series of briefings telling the whole workforce about the member's transition. Later, there were a few complaints about the member using the female toilets but by the end of the process the member was using the female facilities in the warehouse.

NOTE - it is not always necessary for the whole workforce to be told however, awareness training should be provided when appropriate.

Pensions and retirement age

The main difference is that men reach pensionable age at 65, while women reach pensionable age at 60. These inequalities have started to disappear since April 2010, but the equalisation process will not be complete until 2020.

Everyone born since April 1955 receives their state pension at 65. But women born before 1950 can still claim state pension at 60. Trans people without a Gender Recognition Certificate are paid their state pension according to the sex recorded at birth.

If a Trans member retires earlier or later than others of their gender because of their legal sex, UNITE reps should ensure the employer keeps the reason for this confidential.

When a Gender Recognition Certificate has been issued, Trans members can claim the State Pension when they reach the State Pension age appropriate to their acquired gender⁵.

In the case of company pensions, Unite reps need to negotiate the best option for the trans member who has changed his or her gender. The member should at a minimum be treated as the member of their acquired gender for the when the date they transitioned. Employers registering workers for corporate insurance and benefits policies need to check with their underwriters if they need to provide information about any Trans worker's status. Some insurers automatically invalidate a policy if the trans status of a person without a Gender Recognition Certificate is not disclosed.

UNITE reps should ensure that the employer gets written consent from the member before disclosing information, and that the information is provided in confidence. If the employer doesn't know about the worker's trans status, the obligation to disclose this passes to the worker.

Recruitment and selection

UNITE reps should work with employers to ensure they have fair recruitment and selection processes. Particular areas that will need to be looked at are advertising, interview and selection.

Adverts should be placed in LGBT media and should include equal opportunities commitments/statements eg applications from trans people are welcome.

A Trans job applicant is under no obligation to disclose their situation at interview, nor should this question ever be asked. However, if they do choose to talk about it, it would be unlawful to use this as a reason for not offering them the job. Similarly, it is unlawful to dismiss someone for not disclosing their gender history, or for disclosing this a later date.

Occupational Requirement

The Equality Act 2010 allows for an employer to recruit workers of a particular gender for jobs where there is an 'occupational requirement' eg. a women's refuge. However, an employer is not allowed to discriminate against a trans person who has gained legal recognition for their acquired gender. This applies to all exemptions including, if the job involves intimate body searches and working in a private home involving intimate contact.

The Equality Act 2010 makes it clear that the employer must act reasonably in applying an occupational requirement. They must show that it is a proportionate means of achieving a legitimate aim.

The Equality Act 2010 has, regrettably, exempted organised religion from this form of discrimination. This means that religious organisations can apply for an occupational requirement of an employee not to be a transsexual person. However, they still have to be able show, as before, that it is essential for the post.

⁴Croft v Royal Mail Appeal Court judgment 18 July 2003

⁵Richards v Secretary of State for Work and Pensions-case C-423/04 ECJ 2006;
Grant v The United Kingdom-Application No. 32570/03-ECtHR 2006

Monitoring

Trans monitoring is an issue that needs to be considered well and the union and staff should be consulted beforehand.

It is important that the reason for monitoring is clearly outlined by the employer and again in consultation with the union. Unite reps need to find out the purpose of collecting this data, how it will be interpreted, what it will be used for and what action will be taken as a result. Also, how the data is going to be collected, who will be responsible for processing it, how and where it will be stored and reported.

Confidentiality is paramount in safeguarding this data and this should be made clear to all concerned. As stated before under the Gender Recognition Act 2004, it is a criminal offence to pass on information acquired 'in the course of official duties' about someone's gender recognition without their consent.

Caution is needed in the reporting of this data so as not to 'out' any members and this is especially important in smaller workplaces. However, in larger organisations if the questions on the form break people down to eg. departments or sections then it can still 'out' people.

The Employment Statutory Code of Practice emphasises confidentiality and recommends that for example, diversity statistics should not be linked to IT-based personnel records that indicate grade or job title

The suggested questions in the form can either be a tick box for TRANS which has to be a question on its own or 'is your gender identity the same as the gender you were assigned to at birth?' To decide on the best form of questioning Unite reps need to consult with all members or only trans members, if possible.

What laws apply to Trans people?⁶

Gender Recognition Act 2004

This Act enables people aged over eighteen to gain full legal recognition for the gender in which they live. Applications are considered by the Gender Recognition Panel. Once a person receives a Gender Recognition Certificate, they are legally of that gender for every purpose and have all the rights and responsibilities associated with that gender.

Trans people can apply for a Gender Recognition Certificate (GRC) as soon as they can prove that they have been living permanently in the new gender for a period of at least two years. Once a full GRC has been issued, the Gender Recognition Panel will make arrangements for the General Register Office to issue a new birth certificate.

Many trans people do not apply for a GRC for various reasons for example health, personal, family, financial, marital or other reasons.

"Why should I have to get divorced from my life-long partner so that I can get my Gender Recognition Certificate?"

If a person was married before undergoing gender reassignment, they can't currently apply for a full GRC without dissolving their marriage, which many people are not prepared to do. However it is possible to get an interim certificate, dissolve the marriage and enter a civil partnership with the same person. Once same sex marriage is introduced, married people will be able to gain full gender recognition without ending their marriage.

All Trans workers regardless of whether they have obtained a GRC or not, are entitled to full employment rights. Employers should not ask for a person's GRC and it should never be a pre-condition for transitioning at work.

A person disclosing any information about someone's GRC can be prosecuted (time limits apply).

A trans person without a GRC should not be treated less favourably than someone with a GRC and that they have the same rights as a GRC holder.

⁶This is still at Bill stage in the Republic of Ireland - The Gender Recognition Bill

Equality Act 2010

The Equality Act [The Gender Reassignment Regulations (NI) 1999 amended the Sex Discrimination (NI) Order 1976. The Employment Equality Acts 1998–2008 in the Republic of Ireland and the Equal Status Acts 2000-2004⁷] provides protection for Trans people, under the protected characteristic of 'gender reassignment'.

This applies to people “intending to undergo, are undergoing, or have undergone gender reassignment”. This has been clearly explained in the Employment Statutory Code of Practice as “a personal process, that is, moving away from one’s birth sex to the preferred gender rather than a medical process. The reassignment of a person’s sex may be proposed but never gone through; the person may be in the process of reassigning their sex; or the process may have happened previously. It may include undergoing the medical gender reassignment treatments, but it does not require someone to undergo medical treatment in order to be protected” which makes this a social process rather than a medical one.

“So easy to get isolated at work. People who two years ago talked to me, don’t now. I just stick with those that do. The others will come back to the fold.”

Under the Equality Act 2010, Trans people are protected in employment, training, housing, education and provision of goods, facilities and services [Sex Discrimination (Amendment of Legislation) Regulations 2008 in Northern Ireland]. The Act covers employees, job applicants, self-employed, apprentices, contract workers, partners in firms and office holders. It also covers bodies responsible for giving qualifications, trade unions’ relations with their members, employment service providers, members of local authorities, and trustees of occupational pension schemes.

The Equality Act 2010 outlaws:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation

The Equality Act 2010 also provides protection for:

Perceptive Discrimination - to discriminate or harass a person because they are perceived to be Intending to undergo, are undergoing, or have undergone gender reassignment

Associative discrimination - to discriminate or harass a person because they are associated with a person who is intending to undergo, are undergoing, or have undergone gender reassignment

Employers are **liable for discriminatory actions of anyone** acting on their behalf, regardless of if they had any knowledge of it. However, if the employer can show that they have taken all reasonable steps to prevent discrimination then there may not be a case.

Employers are also liable for **harassment by a third party**⁸ where employees are protected against this form of harassment by eg. customers, clients or visitors related to all protected characteristics. Employers have a duty to protect their employees in such cases however there is the ‘three strikes’ rule. Employers can be liable for third party harassment where: harassment has occurred on two previous occasions (not necessarily from the same third party); they are aware that this has happened; and they have not taken reasonable steps to prevent it from happening again.

Harassment is a prohibited conduct under the Equality Act 2010. It takes place when someone is subjected to unwelcome and unwanted conduct of a sexual nature or related to their gender reassignment or sex which violates a person’s dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment.

The Equality Act 2010 makes it unlawful to **discriminate against a person for taking time off** because of gender reassignment whether he/she is proposing to undergo, is undergoing or has undergone the process.

“Comes a point where you have to say, get over it”

⁷The Equality Authority notes that the Equal Status Acts 2000-2004 will also have to be interpreted to provide transsexual people with protection against discrimination

⁸Despite overwhelming opposition, the Government intends to repeal the third party harassment provisions in the Equality Act 2010, taking effect in April 2013. The Government claims that there is no evidence that the provisions serve a practical purpose or an appropriate way of dealing with third party harassment and employees will have other avenues of legal redress. Following the repeal there will be nothing in the Equality Act 2010 that makes explicit reference to employer liability.

Negotiators Checklist

- Ensure complete confidentiality
- Ensure your members are treated and recognised as the gender they live and work in
- Make sure policies and procedures are put in place to support members undergoing transition
- Support the member to discuss the management of the transition process with the appropriate manager
- Negotiate sufficient paid leave that does not count against the member's sick record and not used for absence management purpose
- Ensure, through negotiations, that disclosure including information to pension providers, is not made without written permission of the member
- Make sure trans member's records are updated and all old records are destroyed
- Ensure staff and managers are trained on trans equality
- Trans equality proof all policies and practices
- Negotiate a harassment policy that includes gender identity
- Work with employers to ensure they have fair recruitment and selection processes such as advertising, interview and selection
- Ensure confidentiality in case where the reason for early retirement is because of the member's legal sex
- Negotiate the best option in company pensions for the trans member who has changed his or her gender. The member should at a minimum be treated as the member of their acquired gender for the when the date they transitioned
- Find out the purpose of monitoring before agreeing to it eg. how it will be interpreted, what it will be used for and what action will be taken as a result, how the data is going to be collected, who will be responsible for processing it, how and where it will be stored and reported

Where can I get more advice?

Members should in the first instance contact their UNITE rep. The UNITE rep may seek advice from the regional office or from the Regional Women's & Equalities Organiser.

Members who wish to become involved in UNITE's Lesbian, Gay, Bisexual and Trans Committees need to contact their Regional Women's & Equalities Organiser, or the National Officer for Equalities (please refer to contact details at the end of this guide).

Useful Contacts

The Gender Trust - a registered charity helping Trans people and all those affected by gender identity issues 01527 894 838 www.gendertrust.org.uk

Press for Change - a lobbying and legal support organisation for Trans people with useful information on their website www.pfc.org.uk

Advice Line: 08448 708 165

9:30am to 5pm, Thursdays guaranteed answer Mon to Wed 10am to 4.30pm when volunteers are available

Gender Identity Research and Education Society (GIRES) - provides a wide range of support for trans people and those who care for them www.gires.org.uk 01372 801554

Equality and Human Rights Commission - challenges discrimination, enforces and promotes equality, and protects and promotes human rights.

0161 829 8100/0207 832 7800

www.equalityhumanrights.com

The Equality Advisory Support Service (EASS)

www.equalityadvisoryservice.com

Tel: 0808 800 0082 Textphone: 0808 800 0084

09:00 to 20:00 Monday to Friday 10:00 to 14:00 Saturday

Gender Recognition Panel - Information about legal gender recognition, including a step-by-step guide to the process and application packs, can be found at www.grp.gov.uk

0300 1234503 9am and 5pm, Monday to Friday

Trade Union Congress (TUC) - the umbrella organisation for trade unions in Britain which campaigns for a fair deal at work and for social justice 020 7631 0728 www.tuc.org.uk

Unite Regional Contacts

North West	0151 203 1907
North East, Yorkshire & Humberside	0113 236 4830
West Midlands	0121 553 6051
East Midlands	01332 548 400
South West	0117 923 0555
South East	0118 402 6810
London & Eastern	020 8800 4281
Ireland	028 90 020418/028 90 232381
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