



# Best Practice Suggestions to Legal Employers Regarding Transgender Rights in the Workplace

The Massachusetts transgender equal rights law, An Act Relative to Gender Identity, added “gender identity” to General Laws chapter 151B, the state’s employment anti-discrimination law.<sup>i</sup> The law goes into effect on July 1, 2012, and law firms and other employers throughout the Commonwealth are taking this opportunity to evaluate their policies and practices to comply with the law and make their work environments more respectful, inclusive, and welcoming to current and potential transgender employees and clients.

The Massachusetts LGBTQ Bar Association’s Committee on Transgender Inclusion offers the following best practice suggestions for legal employers:

- 1) **DIGNITY AND RESPECT:**<sup>ii</sup> Treat all employees – including those who are transgender and gender non-conforming – with dignity and respect. Do not ask transgender employees or clients about their identity or gender transition unless there is a legitimate reason for doing so. Treat an employee’s gender transition like any other significant, and highly personal, life event, such as pregnancy, marital difficulties or health problems.
- 2) **VALUE TALENT AND DIVERSITY:** Recruit, hire, retain, and promote transgender employees.

3) **NON-DISCRIMINATION:** Include “gender identity/expression” in the list of protected classes contained in the non-discrimination policy, anti-harassment policy, equal employment opportunity policy, application form, job postings and other documents that address issues of non-discrimination.<sup>iii</sup>

4) **TRAINING:**<sup>iv</sup> Training programs and materials related to discrimination, harassment, diversity, cultural competency, supervision, leadership and company policy should address gender identity. Educate employees – and particularly HR staff, management, supervisors, decision-makers, security, and reception staff – about transgender people. During training, explain the concept of gender identity (a person’s internalized sense of who s/he is as male or female or some combination of those characteristics); that a person’s gender identity does not always match society’s stereotypical expectations; that it is illegal to discriminate on the basis of gender identity; and that confidentiality and discretion are of the utmost importance for a transgender employee.

5) **INSURANCE:** Offer comprehensive health insurance to transgender employees and employees’ transgender dependents that clearly and explicitly affirms coverage and contains no categorical exclusions for coverage of all transition-related medical care identified as appropriate in the World Professional Association for Transgender Health (WPATH) Standards of Care (SOC).<sup>v</sup>

6) **PREFERRED NAME & PRONOUN:** Allow employees to self-identify their preferred name (including non-legal name) and choice of pronoun. Have a policy and system for using employees’ preferred name and pronoun on personnel records, internal and external employee directories, business cards, websites and other written and electronic records.<sup>vi</sup>

7) **EQUAL FACILITIES ACCESS:** Develop a policy that allows employees (and clients and other visitors) to access restrooms and other traditionally sex-segregated facilities. Allow individuals to use the facility that is consistent with their gender identity and expression and make all staff (including “gatekeepers” such as reception and security staff) aware of the policy.

8) **GENDER TRANSITION:** Adopt a written policy that sets forth the responsibilities and expectations of the employee and employer when an

employee undergoes gender transition.<sup>vii</sup> Make the policy easily accessible to all employees.

Thank you for doing your part to promote equal protection and equal opportunities for employees of all gender identities and expressions. For more information on best practices, refer to the U.S. Office of Personnel Management's Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace, the Human Rights Campaign's Corporate Equality Index, and the ABA's Best Practices for Promoting LGBT Diversity.

The statements made in this document are not intended as legal advice, and should not be relied on as such. Legal and other employers are encouraged to consult with counsel regarding their obligations under the new law.

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<sup>i</sup> In addition to amending the employment anti-discrimination law, An Act Relative to Gender Identity also prohibits discrimination on the basis of gender identity in public education, housing, credit and lending, and adds gender identity to the state's hate crimes law.

<sup>ii</sup> *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace*, U.S. Office of Personnel Management, available at <http://www.opm.gov/diversity/Transgender/Guidance.asp>.

<sup>iii</sup> "Gender identity" is defined in Massachusetts law as "a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held as part of a person's core identity; provided, however, that gender-related identity shall not be asserted for any improper purpose." 2011 Acts c. 199. See also HRC Corporate Equality Index at 14; Best Practices for Promoting LGBT Diversity, American Bar Association Commission on Sexual Orientation and Gender Identity at 6 (2011), available at [http://www.americanbar.org/content/dam/aba/administrative/sexual\\_orientation/sogi\\_best\\_practice\\_guide\\_lgbt.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/sexual_orientation/sogi_best_practice_guide_lgbt.authcheckdam.pdf).

<sup>iv</sup> The Massachusetts Transgender Political Coalition ([www.masstpc.org](http://www.masstpc.org)) and the Mass. LGBTQ Bar Association's Committee on Transgender Inclusion ([www.masslgbtqbar.org](http://www.masslgbtqbar.org)) offer trainings.

<sup>v</sup> WPATH SOC available at <http://www.wpath.org/documents2/socv6.pdf>; see also Corporate Equality Index 2012, Human Rights Campaign at 13; available at [http://sites.hrc.org/documents/CorporateEqualityIndex\\_2012.pdf](http://sites.hrc.org/documents/CorporateEqualityIndex_2012.pdf).

<sup>vi</sup> For one example of policies reflecting preferred names and pronouns, see [http://www.uvm.edu/~rgweb/?Page=policiesandprocedures/p\\_preferredname.html&SM=p\\_menu.html](http://www.uvm.edu/~rgweb/?Page=policiesandprocedures/p_preferredname.html&SM=p_menu.html).

<sup>vii</sup> See *Workplace Gender Transition Guidelines*, Human Rights Campaign, available at <http://www.hrc.org/resources/entry/workplace-gender-transition-guidelines>. This site includes sample policies from companies such as Chevron, Ernst & Young, and Boeing. See also U.S. Office of Personnel Management *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace*, available at <http://www.opm.gov/diversity/Transgender/Guidance.asp>. The Massachusetts Transgender Political Coalition ([www.masstpc.org](http://www.masstpc.org)) also has resources for employers who are developing policies to successfully support a transgender employee who is undergoing a gender transition.