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Gender identity and gender expression in the workplace



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Gender identity and gender expression have come to the forefront of news headlines in recent years. Caitlyn Jenner's announcement to transition from male to female brought a lot of attention to the topic. More recently, singer Sam Smith announced he is non-binary.

We are also seeing the issue raised in schools, government, and the military.

In May 2017, the Ontario government introduced a policy to use gender identity in most cases rather than sex on government forms and IDs. Individuals can choose to identify their gender as: i) male 'M'; ii) female 'F', or; iii) 'X', which includes those who wish to identify as a gender other than male or female or those who don't want to disclose their gender identity.

In March 2019, the Canadian Armed Forces revamped its policies on medical and surgical supports, uniform and naming procedures, and accommodations for bathrooms, showers, and other private areas to be inclusive of gender identity and gender expression.

In schools, the Ontario government's newly released sex-ed curriculum introduces the subject of gender identity in Grade 8, although a change from the previous government's 2015 curriculum, which introduced the topic in Grade 2.

Workplace Obligations under Human Rights Code

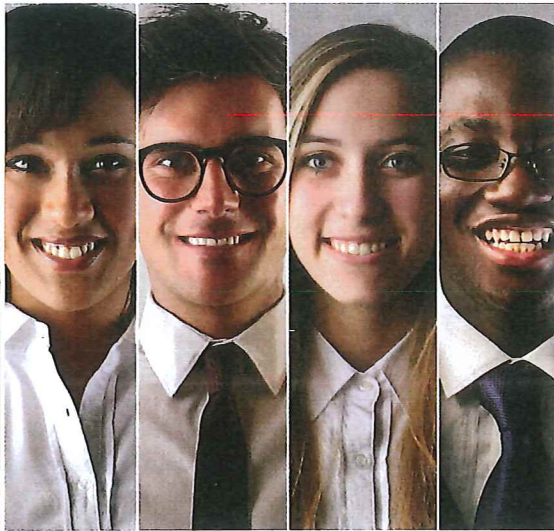
In the workplace, gender identity and gender expression were introduced as prohibited grounds of discrimination under the Ontario *Human Rights Code* in 2012 and under the *Canadian Human Rights Act* in 2017.

Sex is different than gender. Sex is anatomical, typically based on chromosomes, hormones, and external anatomy, and is usually assigned at birth to be male, female, or intersex. Gender identity is a person's internal identification of gender regardless of their sex. Gender expression is how someone expresses their gender identity: for example, how they dress, do their hair and makeup, mannerisms, preferred name and pronouns, intonation, and voice.

A person's gender identity can fall anywhere on the gender spectrum. Transgender is an umbrella term referring to people with diverse gender identities and expressions that differ from stereotypical gender norms.

According to the Ontario Human Rights Commission (OHRC), people who are transgender, or gender non-conforming, are one of the most disadvantaged groups in society. Trans people routinely experience transphobia: discrimination, harassment,

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and even violence because their gender identity or gender expression is different from their birth-assigned sex. A 2013 PULSE survey reported that 98 percent of transgender people had experienced some form of transphobia.

Gender identity and expression are distinct and unrelated to a person's sexual orientation.

Gender-based discrimination and harassment come in many forms such as:

- refusing to refer to a person by their self-identified name or pronouns;
- using forms that are not gender inclusive;
- comments that a person is not conforming with gender-role stereotypes;
- jokes;
- spreading rumours;
- "outing" or threatening to "out" someone;
- comments that demean or ridicule based on gender identity or expression; and
- behaviour that polices traditional gender norms.

Employers have a duty under the Code to accommodate gender identity and gender expression. This includes taking steps to create an inclusive workplace and fulfilling accommodation requests to the point of undue hardship. Creating an inclusive workplace can involve some or all of the following:

- meaningful discussions with, and support for, employees regarding gender identity and gender expression;
- gender-neutral washrooms/changerooms and options for privacy;
- gender-inclusive HR forms;
- gender-neutral dress codes and uniform choices;
- respecting preferred pronouns (e.g., he/she, they/them/their, ze/sie/zie/hir);
- determining and respecting the level of information the employee wants to share with others in the workplace;
- related education and training for employees and management; and
- a genuine commitment to meeting the duty to accommodate gender identity and gender expression issues.

An inclusive workplace also includes having a guideline in place before a transitioning employee or an employee with a lived gender identity that differs from their sex comes forward. It assists in

ensuring everyone's rights are respected and obligations are met. The OHRC's Policy on preventing discrimination and harassment based on gender identity and gender expression suggests that the guideline:

- provide clear direction for managers on how to generally help transitioning employees, while still recognizing the obligation to take the individual's needs into account;
- designate a lead contact to assist the transitioning employee;
- speak to what a transitioning employee can expect from management;
- address the expectations of management, staff, and transitioning employees in facilitating a successful workplace transition; and
- reference related policies and practices for assisting with the transition process, such as: washroom policies, dress code policies, confidentiality and privacy, recognizing the person's new name in documentation and records, anti-harassment policies, dealing with any individual accommodation needs, as well as training for management, staff, and clients.

Like other protected grounds under the Code, the duty to accommodate gender identity and gender expression are most successfully carried out through an individualized accommodation plan that is created and applied flexibly through meaningful discussions with the employee and any other applicable parties, such as the union. The OHRC's Policy on preventing discrimination and harassment based on gender identity and gender expression suggests a transition accommodation plan include:

- timelines and dates regarding when the employee would like to be addressed by their new name and new pronoun;
- when the employee will begin expressing their gender identity through clothing;
- use of washroom and other facilities in their lived gender identity;
- the ability to take time off work for medical treatments related to their transition;

GENDER, cont'd on p. 36

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GENDER, cont'd from p. 4

- when and how any related employment records, documents, and databases will be updated to reflect the employee's new name and gender (e.g., human resources and administrative records, email and phone directories, business cards, etc.);
- if, when, and how other employees and clients will be informed of the employee's new name and gender identity;
- anti-harassment planning – a simplified process to deal quickly and effectively with any harassment the transitioning employee may experience;
- when and how training for other employees, clients, or managers will be provided to help them understand the transition process, if appropriate; and
- how management and the union will show support for the transitioning employee.

Key Takeaways

There are numerous ways an organization can show support for gender identity and gender expression in the workplace. These include:

1. Implement steps to achieve an inclusive workplace.
2. Address unconscious bias and promptly address gender-based discrimination and harassment.
3. Be flexible, open-minded, and diligent in meeting the duty to accommodate an employee's gender identity and expression-related needs.
4. Review and revise workplace policies to ensure they are inclusive of gender identity and gender expression-related issues.
5. Educate and train staff.
6. Respect people's right to live their gender identity and live true to who they are.

It's clear we are living in an exciting time of social change around gender identity and gender expression. As members of society, employees and employers, there is much we are obligated to do and can do to support and respect employees' gender identity and gender expression. **MW**

EMPLOYEE, cont'd from p. 18

While engagement numbers look bad, there is hope – and it lies in human nature. The vast majority of people want to do a good job and derive a sense of fulfilment. We can safely assume they would rather have work that is a creative and liberating process instead of a daily grind. People want to matter and make a difference. We need to create the right conditions, recognize what drives each of us, and find a way to harness it. As business writer Daniel Pink wrote in *HR Edge* in the fall of 2011, “Our nature is to be active and engaged ... I defy you to find me a two-year-old who's passive and inert ... that's learned behaviour.” In the same vein, Canada Human Resources Centre stated, “Disengaged employees aren't born that way. They're created by ineffective, badly trained managers and lack of strong human resource management within corporations.”

Role for HR in Engagement

The responsibility of HR in employee engagement is an important point. HR departments and practitioners have a key role to play in fostering and facilitating true engagement, resisting executive reflexes for quick fixes and thus safeguarding credibility among the rank and file, who are always watching and modifying behaviour accordingly.

Employee engagement programs can add value, but only as an added benefit – after the root causes of discontent have been identified and addressed. This includes making sure only competent managers are hired – people who actually enjoy interacting with others at least 50 percent of their time. People managers need people skills, which include the ability to interact effectively and empathize with others and to accurately communicate goals and expectations. When managers and management candidates lack these skills, they shouldn't be hired for or promoted to positions where they would supervise (more) people, which would exacerbate a known (or at least knowable) issue. **MW**