

RESOURCES

- Alberta Trans –
- www.AlbertaTrans.org
- Calgary Outlink –
www.calgaryoutlink.ca
- Institute for Sexual Minority Studies and Services –
- www.ismss.ualberta.ca
- National Center for Transgender Equality (American) –
www.transequality.org
- Trans Equality Society of Alberta –
www.tesaonline.org

REFERENCES

- (1) For more information on gender identity and gender expression in general, see our tri-fold on this topic.
- (2) *Ferris v Office and Technical Employees Union, Local 15* [1999] BCHRTD No 55.
- (3) Male-to-female trans person who was identified at birth as male but is female. For further definitions see one of the Resources.
- (4) *Sheridan v. Sanctuary Investments Ltd*, [1999] BCHRTD No 43, 33 CHRR D/467 (BC Trib).

Note: this pamphlet gives information on how the law and cases have addressed transgender and transsexual employees. Some of these concepts will be the same for gender diverse populations. However, in the interest of specifically addressing issues related to being trans, this pamphlet has focused on these areas. See also our pamphlet on the broader topic of gender identity and expression.

WHO WE ARE

The Alberta Civil Liberties Research Centre (ACLRC) provides resources, research and education on human rights and civil liberties issues. The ACLRC publishes many research papers and information pamphlets on legal rights and responsibilities. We provide speakers on various human rights issues affecting Albertans.

This pamphlet does **not** provide legal advice, but gives an overview of the law and some important information for employers.



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EMPLOYER'S GUIDE

Trans-identified people in the workplace



REDUCING DISCRIMINATION

This resource addresses the employer's responsibilities in accommodating transgender and transsexual employees.(1) The *Alberta Human Rights Act*, in section 7 and 8, protects people in employment and employment applications from discrimination based on gender identity and gender expression.

Employers have a duty to accommodate a transgender person who, for instance, needs time off work for medical reasons, such as surgery or recovery from surgery, and to accommodate a person who returns to work after a medical procedure.

An employer may reduce discrimination against transgender employees by:

- Ensuring use of the washroom matching a person's gender identity;
- Assisting in accessing medical benefits;
- Using the pronoun that a transgender person requests;
- Helping with the transition back to work after a medical procedure;
- Getting resources on the topic and updating human resources policies;
- Keeping gender information on employee records private; and
- Learning more about gender identity and gender expression, and educating other employees.

BATHROOMS / CHANGEROOMS

A transgender employee should be permitted to use bathrooms and changerooms corresponding with his/her/their gender identity or have the use of a non-gendered bathroom.

For instance, Ms. Ferris(2) was a MtF transgender woman,(3) who was employed for 20 years by the same company. A coworker complained that Ms. Ferris should be using the men's washroom. The union did not investigate the situation properly and did not fight against the company's treatment of Ms. Ferris. Expert evidence at the hearing noted that transgender people are particularly vulnerable to discrimination, which takes an emotional toll; refusing the use of the women's washroom had a detrimental effect on Ms. Ferris and challenged her identity as truly a woman. The Union was found to have discriminated against Ms. Ferris.

In *Sheridan*(4) an MtF transgender woman was refused the use of the women's washroom. The British Columbia Human Rights Commission found that this was discriminatory treatment. A doctor speaking about transgender rights said that using the appropriate washroom was "significant" in the identity of a transsexual person.

REVEALING GENDER IDENTITY

Many transgender people have successfully transitioned at work. For some, there may come a time when colleagues and staff must be informed. Involving the employee in a discussion of how to do this respectfully is the best way to develop a process. The employer must be cautious not to release medical or private information to those who do not need to know. Past gender information of an employee is private information. There is no necessity per se to reveal this information if it does not affect the employee's job duties.

There is no obligation on a transgender person to reveal to the employer that they are considering transition. Once the employee begins to make plans, such as having surgeries that will involve absences from work, the employee must then inform the employer of a need for accommodation.

Transgender people may change their identity documents, but this may take time, and is not always a quick and easy process. For more information, see www.AlbertaTrans.org.

GENDER QUEER

Protecting rights based on gender identity is more than just protecting transgender employees who identify as male or female. "Gender expression" was recently added to the *AHR Act*, and includes ways in which a person expresses gender through demeanour, dress, grooming and behaviour. Those who identify as gender queer or other non-binary genders are all owed a respectful workplace.(1)

What is gender identity and gender expression?

Gender identity and gender expression are protected grounds under the *Alberta Human Rights Act*. Gender expression is how individuals articulate their gender. For instance, a person might wear make-up, they may prefer dresses and their expression of gender may not match what has traditionally been expected. Gender expression not only includes a person's dress, but also how they talk and present to others in their community.

Someone who is:

- "gender fluid" may define as a dynamic mix of girl and boy on any given day.
- "gender non-conforming" may not express their gender within expected cultural and social norms.
- "gender queer" or "non-binary" may ask you to use a specific pronoun such as "they/them" when referring to them.
- "androgynous" may look neither male nor female or a bit of both.
- "transsexual" may choose to have surgeries or take hormones so that their sex assigned at birth reflects their gender identity.

Definitions of gender are changing rapidly. Search the internet for current definitions from a reputable source or see one of the resources on the back side of this pamphlet. The ACLRC offers education seminars to organizations on these topics.

