

31 March 2021

## Employment – 20:20 vision

Providing clarity and insight on employment law matters

### International Transgender Day of Visibility: Creating a trans inclusive workplace



The 31<sup>st</sup> of March is celebrated annually as International Transgender Day of Visibility. The day celebrates the achievements of trans people around the world, recognises their wide and varied contributions to society and raises awareness of the discrimination that trans people face.

#### Why is this important to employers?

Stonewall estimates that roughly 1% of the British population identifies as trans.<sup>1</sup> However, as millennials and Generation Z enter the workplace, the make-up of workforces is set to change significantly. A US study found that 25% of millennials knew someone who uses gender neutral pronouns, such as "they" and "them", whereas 35% of Generation Z said the same.<sup>2</sup>

It is therefore important that employers take steps to understand the experiences of trans people and to ensure that their workplaces are a safe and inclusive place. Recent figures published by CIPD suggest that this may not currently be the case, as 55% of trans workers have experienced workplace conflict and harassment, compared with 29% of their cisgender, heterosexual counterparts.<sup>3</sup>

#### What legal risks do employers face?

If employers do not take action to facilitate a trans inclusive workplace, they could face a number of legal risks. Under the Equality Act 2010, gender reassignment is a protected characteristic, which means that people with this characteristic are

protected against discrimination, victimisation and harassment. The recent case of *Taylor v Jaguar Land Rover* extended this protection under the Equality Act 2010 to people who identify as non-binary and gender fluid. In addition, employers could also face claims for constructive dismissal if they fail to support their trans employees and adequately address transphobic behaviour in the workplace. It's also worth noting the reputational damage and negative publicity that employers can attract if they fail to facilitate inclusive workplaces.

#### What can employers do to support their trans employees?

Fear of discrimination and hostility often means that trans people are afraid to be their authentic selves at work. We have set out below several suggestions to help employers foster a trans inclusive workplace:

1. **Educating workforces** – Take the time to inform the workforce about the lived experiences of trans people and the common challenges they face. There are a number of helpful resources online such as this [Q&A produced by Stonewall](#).
2. **Visible leadership** – Trans people are often looking for signals from their employer that it is safe for them to be out at work. Having visible and vocal "trans allies" in senior leadership positions, who are committed to supporting the trans community, is central to creating a trans

<sup>1</sup> <https://www.stonewall.org.uk/truth-about-trans>

<sup>2</sup> <https://www.pewresearch.org/social-trends/2019/01/17/generation-z-looks-a-lot-like-millennials-on-key-social-and-political-issues/>

<sup>3</sup> <https://www.cipd.co.uk/knowledge/fundamentals/relations/diversity/inclusion-perspectives-lgbt>

inclusive workplace. Remember culture is largely set from the top. Any buy-in from senior leadership should be part of a wider commitment to trans inclusion and should not be tokenistic in nature.

3. **Training** – Prejudice and discrimination often come from a lack of understanding. Providing quality training on gender identities and the surrounding issues not only educates employees but can also empower them to act as allies and call out transphobic behaviour when they encounter it.
4. **Policies** – It is good to have a comprehensive trans equality policy in place, which sets out a zero tolerance approach to transphobia and a commitment to trans inclusion, addresses support (including any leave) that is available for employees that are transitioning as well as guidance on facilities. Other policies, such as dress codes and family friendly policies, should be reviewed for gendered language.
5. **Networks** – LGBTQ+ networks are a valuable resource in fostering a trans inclusive workplace, as they are often internal advocates for change and can be a safe harbour for support amongst peers. You should ensure that any such network is inclusive for trans people and that their mandate includes addressing issues facing the trans community.
6. **Confidentiality** - Any disclosure by an employee about their trans identity should be dealt with in the upmost confidence and any dissemination of that information should be done with the express consent of that individual. Under s.22 of the Gender Recognition Act 2004, except in specified circumstances, it is a **criminal offence** for employers and prospective employers to disclose "protected information" about an employee's trans identity. For this reason, it is also good practice to provide HR staff with training on supporting trans employees and having clear processes in place for handling such protected information.

*Note: In this e-alert, we have used the word trans. This is because we realise that trans people use a number of different terms to describe their gender identity. Trans is a helpful umbrella term which Stonewall describes as capturing people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth.<sup>4</sup>*

For assistance with drafting or reviewing appropriate policies, providing training or any queries relating to this alert please contact Paul Reeves, Leanne Raven, Elspeth Hunt or your usual Stephenson Harwood contact.

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<sup>4</sup> <https://www.stonewall.org.uk/what-does-trans-mean>