

## EMPLOYMENT

# Transgender Inclusion in the Workplace

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A 2017 survey by the Transgender Equality Network Ireland found that 55% of respondents indicated that they had experienced or witnessed transphobic bullying in the workplace, with 45% of respondents indicating that they believed they had to conceal their gender identity/trans status to avoid transphobic discrimination at work.



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The naturally arising question is how does Irish equality law treat discrimination claims by transgender employees, and what can employers do to support transgender employees in the workplace.

## THE POSITION UNDER IRISH LAW

### Gender Recognition

The Gender Recognition Act 2015 provides a process enabling trans people to achieve full legal recognition of their gender and allows for the acquisition of a new birth certificate that reflects this change. Notably, the protections afforded by Irish equality law outlined below apply not only to those who have their gender recognised under the Gender Recognition Act, but to any person suffering discrimination on the basis that they are transgender, transitioning, their sexuality, or indeed any of the other protected grounds outlined in the Employment Equality Acts 1998-2015.

### Employment Equality Acts 1998 – 2015

Under the Employment Equality Acts, discrimination is prohibited on the basis of a person's gender, civil status, family status, age, race, sexual orientation, disability, membership of the traveller community and religious belief. The question of whether the gender ground encompassed transgender was considered in the 2011 Equality Tribunal decision in *Hannon v First*

*Direct Logistics Ltd [DEC S2011-066]*. In *Hannon*, the claimant claimed that she had been constructively dismissed when she revealed her gender identity and began transitioning. The Tribunal found in favour of the claimant thus helpfully clarifying that the gender ground encompasses transgender under the Employment Equality Acts in Ireland.

### Recent UK Decision

A recent UK decision supports this interpretation of the gender ground. In *Rose Taylor -v- Jaguar Land Rover Ltd (Case No 1304471/2018)* the claimant worked as an engineer in Jaguar Land Rover's (JLR) plant for over 20 years. In 2017, Ms Taylor identified as gender fluid/non-binary, from which time she usually dressed in women's clothing. Ms Taylor was subsequently subjected to insults and abusive jokes at work. She also suffered difficulties with the use of toilet facilities and managerial support. She brought claims of harassment, direct discrimination and victimisation on the ground of gender reassignment which is one of the protected characteristics under the Equality Act 2010. JLR argued Ms Taylor, as gender fluid/non-binary, did not fall within the definition of gender reassignment under section 7 of the 2010 Act. Ms Taylor made claims of victimisation, harassment, direct discrimination and constructive dismissal. In September 2020, the Employment Tribunal held that it was "clear... that

*gender is a spectrum*" and that the complex gender identity at issue in the case qualified "*beyond any doubt*" as part of a process of gender reassignment, therefore falling within the definition under the 2010 Act. Ms Taylor was awarded £180,000 as compensation.

## PRACTICAL CONSIDERATIONS

Employers should:

- Remember that their obligations under the Employment Equality Acts pertain not only to employees but also to prospective employees such as job applicants and those attending for job interviews and:
  - i. review their recruitment policy to ensure that the terminology and language is appropriate;

- ii. consider how job advertisement should be worded to ensure inclusivity; and
  - iii. maintain a comprehensive record of interview notes for 12 months following interviews.
- Foster an inclusive, open culture in the workplace through workshops, training and employee engagement.
- Review their policies to ensure that they contain appropriate language, terminology, and explicitly include reference to transgender people. Policies such as a non-discrimination policy, dignity and respect policy and, bullying, harassment and sexual harassment policy will all be relevant in this context.
- Effectively communicate with trans or transitioning employees such that they can be provided with support,

confidentiality and/or privacy as necessary. Take the lead from the transitioning employee(s) on changing gender expression, name and pronouns.

- Any such policies should be included in employee handbooks and be easily accessible to employees, suppliers, clients and customers. This can be accomplished by prominently including policies on the company website and in job advertisements. If applicable, customer-facing employees should be informed how your non-discrimination policies apply to customers/clients.
- The trans status of an employee is sensitive personal information under GDPR. Information held in personnel files e.g. employment records, should be maintained with an appropriate level of privacy with reference to the company's privacy policy.