

H1: Transgender in the Workplace: What Hawaii Employers Need to Know

In the evolving landscape of workplace diversity, the rights of transgender people are increasingly in the national spotlight. As protections evolve, employers of all sizes are responsible for staying informed and understanding how best to work with transgender employees.

This article explores the legal and human resources issues that employers may encounter with transgender employees and offers actionable advice as it relates to transgender equality, including:

- [What does the law say about transgender discrimination?](#)
- [Best practices to avoid transgender discrimination claims](#)
- [How to support an employee who is transitioning](#)

Discrimination on the basis of gender identity is [explicitly prohibited by Hawaii law](#), but impassioned opinions around current events could lead to workplace backlash. The Society for Human Resources Management recommends employers reissue harassment prevention policies and consider implementing a transgender policy.

A company culture built on civility and respect provides a strong foundation for navigating social change and legislative uncertainty around gender identity.

Definition of Transgender

The word transgender is an umbrella term encompassing a variety of people whose gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth. ([Source](#))

Transgender Equality in Hawaii

Approximately 8,045 people in Hawaii, 0.8% of the adult population, identify as transgender—the highest of any state, according to a 2016 analysis by The Williams Institute at the University of California at Los Angeles School of Law.

Hawaii also ranks well on the [Transgender Law Center's Equality Profile](#), scoring “medium” on their tally of the number of laws and policies within each state aimed at equality.

However, recent employee lawsuits over [civil rights violations](#) and [workplace harassment](#) are proof that not everyone in Hawaii is on the same page when it comes to this subject. This increase in gender identity discrimination lawsuits filed by, and ruled in favor of, transgender employees is a compelling reason for Hawaii business owners to understand the implications, regardless of personal beliefs, of state and federal protections for transgender employees.

What Does the Law Say about Gender Discrimination?

While federal law is still up in the air, 20 states include gender identity and/or gender expression in their employment non-discrimination statutes. Hawaii law explicitly prohibits discrimination in the workplace on the basis of gender identity, among other protected categories. Under the [Hawaii Fair Employment Practice Law](#), transsexuals, transgendered individuals, and transvestites are protected in all Hawaii workplaces, regardless of size.

This law has far reaching effects across the workplace—from pre-employment inquiries to employee benefits. In order to remain compliant, employers should stay informed and consult with legal counsel and/or an HR expert before making any negative employment-related decisions based on an employee's gender identity.

Avoid illegal pre-employment questions about gender

Hawaii law prohibits companies from asking pre-employment inquiries that relate to an individual's sex or gender. Educate your recruitment teams and review application processes to eliminate questions that gather information about a candidate's gender. This includes questions like, "What is your marital status?" and inquiries about whether the person is a "Mr., Mrs., Miss, or Ms." Employers are also banned from asking if an applicant was born male or female.

Recognize employee gender identity

A transitioning individual, someone who is in the process of going from male to female or female to male, may change their name to more accurately reflect their gender identity. If an updated birth certificate is presented, employers must ensure that all legal employee records reflect the employee's new legal name. Keep in mind that the Hawaii Department of Health does not require a transgender individual to undergo sex reassignment surgery in order to legally obtain a new birth certificate.

Employers may also choose to make accommodations for employees whose gender presentation does not yet match their birth certificate. This could include updating the employee's name on personnel directories, email, and business cards and honoring the employee's preferred pronoun.

Allow equal access to bathrooms and gender-specific areas

Bathroom policies for transgender employees have been a point of contention nationally. However, under new regulation, businesses are required to give employees access to the bathroom of their choice, with or without proof of gender reassignment surgery. Under [Title VII of the Civil Rights Act of 1964](#), denying an employee equal access to a common restroom or restricting an employee to a single-user restroom on the basis of the employee's gender identity

would constitute sex discrimination. It remains to be seen whether the Equal Employment Opportunity Commission under President Trump will continue that interpretation because courts are divided on whether Title VII protects transgender individuals.

The Occupational Safety and Health Association (OSHA) has issued guidance to employers on [best practices regarding restroom access for transgender workers](#) (PDF). In addition to allowing all employees to have access to restrooms, locker rooms, and other gender-exclusive areas, these guidelines also remind businesses that they cannot require a transgender employee to use separate gender-neutral facilities.

Provide benefits to transgender employees

In 2016, Hawaii banned discrimination against gender identity or expression [within insurance contracts](#). The bill prohibits denying, canceling, or limiting coverage based on a person's gender identity. Employers should also keep in mind that an employee's sex reassignment surgery or treatment and medical conditions relating to their gender identity may qualify for benefits or accommodations under terms in the Family Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA).

Best Practices to Avoid Transgender Discrimination Claims

Bathroom access, healthcare, gender discrimination—transgender rights are at the forefront of many national conversations. Though Hawaii is known as the aloha state, many employers are still trying to figure out how best to adapt their workplace policies and handle sensitive situations around gender identity.

The five steps below will assist you in helping your business minimize potential employment liability claims.

1. Keep gender history confidential

Transgender employees may consider information relating to their gender history sensitive data, so take steps to ensure that these details remain confidential. An employee's transgender status should only be shared with specific staff members when necessary, for instance, when disclosing an employee's transition status to an HR official for record keeping.

2. Avoid gender stereotypes in employment policies

Review your employment policies to ensure they are free of gender stereotypes. Ensure that dress code rules avoid stereotypes (such as men must wear pants and women must wear dresses or skirts) and apply consistently to all employees. Some employers may also choose to add a provision that allows employees to dress in accordance with their full-time gender presentation.

3. Incorporate education and compliance training on transgender issues

Transgender employees may become the subject of bullying behavior in the workplace. To combat potential issues of inappropriate behavior, and potential harassment and/or discrimination claims, ensure that all employees receive clear guidance regarding appropriate workplace behavior and understand the consequences of failing to comply with established policies. The best way to provide this information is through required education and sensitivity training sessions—whether that’s a small discussion, a program conducted by an outside facilitator, new hire orientation, or annual refresher training session. No matter the approach you take, ensure that every employee is included.

4. Effectively address harassment complaints and coworker concerns

Some employees may be uncomfortable or have other concerns regarding a transgender employee. It’s important to take complaints and concerns from both sides seriously and address issues quickly. Emphasize your company’s zero tolerance policy on Anti-Discrimination/Anti-Harassment and workplace violence, and remind your employees that they must treat everyone with respect and tolerance.

5. Create guidelines for gender transition issues

If you want to be proactive, plan ahead and create internal guidelines for handling an employee’s gender transition in the workplace. These guidelines should be viewed as a resource to consistently and appropriately manage the transition in the workplace and help your management team feel adequately prepared. Aim to create a document that provides a consistent framework so as to eliminate confusion and potential mismanagement, while also allowing a certain level of flexibility to tailor to the specific needs of the transitioning employee.

Whether you’re a small operation or employ hundreds of employees, taking steps toward promoting a positive work environment that embraces diversity helps to ensure your future success.

To schedule a consultation or learn more about how we can help your company with compliance training or advice relating to transgender employees, [contact simplicityHR](#).

How to Support a Transgender Employee who is Transitioning

Your role as an employer is to work with your transitioning employee, answer employee concerns, and protect your business from potential legal issues. Here are 5 steps for managing an employee in transition, whether they are going from male to female or female to male:

1. Walk the employee through the general procedures for implementing transition-related workplace changes, including updating legal and personnel records.
2. Allow the employee to set the timetable and decide when to tell their co-workers—avoid disclosing information that should be treated as confidential, just as you would with any other employee.

3. Avoid asking questions about the individual's medical history or providing advice about personal grooming/dress.
4. Listen and provide answers to common questions from all employees, such as restroom use, and reiterate your company's anti-harassment policy.
5. Discuss the transition with your legal counsel and/or an HR expert to ensure you remain compliant.

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