



Fact Sheet: Gender Identity

Ontario's Human Rights Code (The Code)

Individuals who are discriminated against or harassed because of gender identity are legally protected in the Code under the ground of 'sex'. This includes transsexual, transgender, and intersex persons, cross-dressers, and others whose gender identity or expression is, or is seen to be, at variance with their birth-identified sex.

Defining Gender Identity

Gender identity is linked to an individual's intrinsic sense of self and particularly the sense of being male or female. A person's gender identity is fundamentally different from, and does not determine, their sexual orientation, which is also protected under the Code. A person's gender identity may not conform to a person's birth-assigned sex and may include the following:

Transgender or Transgendered:

People who are not comfortable with, and who reject, in whole or in part, their birth-assigned gender identities. This may include people who identify as transsexual and people who describe themselves as being on a gender spectrum or continuum rather than identifying with "male" or "female". They may or may not undergo hormone treatment and/or surgical procedures. In order to break down employment barriers related to family status, employees, employers, and government must work together. The Commission believes that government has an important role to play in ensure greater social supports for childcare, eldercare, and persons with disabilities and their families, and in developing minimum legislated standards that support the ability of caregivers to participate in the workplace.

Transsexual:

Individuals who have a strong and persistent feeling that they are living in the wrong sex. Individuals who have undergone, or who want, sex-reassignment surgery may identify as transsexuals. The term may also be used by persons who live in their self-identified gender and may have undergone hormonal transition, but who do not wish to, or cannot, undergo surgery.

Intersexed:

People who are born with both male and female sex organs, or with ambiguous sex organs. This word replaces the inappropriate term “hermaphrodite”.

Crossdresser:

An individual who dresses in the clothes of the opposite sex for emotional satisfaction and psychological well-being.

Discrimination and Harassment:

Discrimination because of gender identity is any action based on a person’s sex or gender, intentional or not, that imposes burdens on an individual or group and not on others, or that withholds or limits access to benefits available to other members of society. This can be overt or subtle, and includes systemic discrimination, such as that which arises from the application of a non-inclusive rule or policy.

Harassment is a form of discrimination. It includes comments, jokes, name-calling, or behavior or display of pictures that insults or offends you or puts you down because of your gender identity. This means that no person should be treated differently while at work, at school, trying to rent an apartment, eating a meal in a restaurant, or at any other time, because of their gender-identity.

Example:

A transsexual person responds to an advertisement for an apartment and is told by the superintendent that there are no units available, even though there are.

Example:

An employee discloses to his manager that he cross-dresses and is told by his manager that he will no longer qualify for promotions or further job training because customers and co-workers will be “uncomfortable” with him.

Example:

A transsexual woman is denied access to the women’s washroom at her place of employment. Her manager defends this by explaining that other staff have expressed discomfort. This workplace requires a policy that ensures the transsexual employee’s right to access the washroom, while providing education to resolve staff concerns and to prevent future harassment and discrimination.

Organizations cannot discriminate based on third-party bias, or leave harassment unchecked: they have an obligation to provide a non-discriminatory environment for trans people. Individuals should be given access to the washroom and change facilities that match their lived gender, unless they request other accommodation (such as for safety or privacy reasons).

The Duty to Accommodate

The “duty to accommodate” is the legal obligation that employers, unions, landlords and service

Example:

A transgendered man raises safety concerns due to threats in the men’s locker room at his gym. The gym management sanctions the harassers and explores possible solutions with the client, such as a single-occupancy shower and change room, or a showering and changing stall in the men’s locker room. They provide him with access to the staff facilities in the interim.

Example:

A transsexual woman is strip-searched by male police, even though she has repeatedly asked to have female officers conduct this type of search. The police service says that a male officer must be involved in the search because the complainant has not had sex reassignment surgery. The Human Rights Tribunal of Ontario has made an order that a transsexual detainee who is going to be strip-searched must be given three options: the use of male officers only; the use of female officers only; or a split search involving both.

Confidentiality of Information

An employer or service provider who legitimately requires and collects personal information that either directly or indirectly identifies a person’s sex, as being different from his or her gender identity, must ensure the maximum degree of privacy and confidentiality. This applies in all situations and circumstances including employment records and files, insurance company records, medical information, etc.

Source: The information in this fact sheet has been developed by the Ontario Human Rights Commission, Please consult the Ontario Human Rights Commission’s Policy on Discrimination and Harassment because of Gender Identity, and related Discussion Paper available on www.ohrc.on.ca