

TRANSGENDER

ISSUES IN THE WORKPLACE

A Tool for Managers



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As America's largest gay, lesbian, bisexual and transgender organization, the Human Rights Campaign provides a national voice on sexual orientation and gender identity and expression issues. HRC effectively lobbies Congress; mobilizes grassroots action in diverse communities; invests strategically to elect a fair-minded Congress; and increases public understanding through innovative education and communication strategies. HRC is a nonpartisan organization that works to advance equality based on sexual orientation and gender expression and identity, to ensure that gay, lesbian, bisexual and transgender Americans can be open, honest and safe at home, at work and in the community.

HRC WORKNET

The Human Rights Campaign Foundation's workplace project, HRC WorkNet, is a national source of information on laws and policies surrounding sexual orientation and gender identity and expression in the workplace. HRC WorkNet advises employees and employers on the value of workplace diversity. It collects, analyzes and disseminates information to assist employees and employers in implementing policies and procedures aimed at treating gay, lesbian, bisexual and transgender workers equally. For more information, visit the HRC WorkNet website at www.hrc.org/worknet, or contact HRC WorkNet at 202/216-1552 or via e-mail at hrcworknet@hrc.org.

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INTRODUCTION

No federal law protects employees from workplace discrimination based on their gender identity or expression. Since the 1970s, a growing number of states and localities have enacted laws prohibiting discrimination based on sexual orientation. At the same time, employers have been modifying their non-discrimination policies to extend protections for gay, lesbian and bisexual workers. Today, three-quarters of Fortune 500 companies include sexual orientation in their written non-discrimination policies.

More recently, many employers have also begun to address discrimination against transgender workers.¹ As an emerging area of interest and concern to employers in America, extending workplace protections to transgender employees presents new challenges and opportunities to managers who may have had little previous exposure to this issue.

The Human Rights Campaign Foundation developed this manual to assist managers in understanding the issues they may face in implementing protections and workplace policies for transgender employees. It is based on conversations with 20 representatives of corporations that have already amended or were in the process of amending policies to address transgender issues in the workplace as well as employer and legislative data HRC WorkNet has been collecting for several years. Additionally, the HRC Foundation elicited feedback and advice from a number of transgender consultants and conducted interviews with other transgender people about their workplace experiences. We encourage readers to tell us about their experiences so that we may continue to refine this tool. Contact HRC WorkNet staff at HRCWorkNet@hrc.org with any questions or comments about these materials.

TERMINOLOGY

The following definitions will help you understand and explain the terms used when discussing transgender issues in the workplace.

Gender Expression: Refers to all external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, physical characteristics and speech patterns.²

Gender Identity: A person's innate, deeply felt psychological identification as male or female, which may or may not correspond to the person's body or assigned sex at birth (meaning what sex was listed on a person's birth certificate).

Gender Identity Disorder (GID) / Gender Dysphoria: A psychological diagnosis, recognized by the American Psychiatric Association, of severe distress and discomfort caused by the conflict between one's gender identity and one's sex at birth. Some people who experience this condition are transsexual, but not all transsexual people experience gender dysphoria or are diagnosed with GID. Furthermore, not all people with GID are transsexuals.

Intersexed: One who is born with sex chromosomes, external genitalia or an internal reproductive system that is not considered "standard" for either male or female. At least one in every 2,000 children is born with mixed sexual anatomy that makes it difficult to label them male or female. Sometimes, such people are termed hermaphrodites.³ Although many intersexed people do not identify as transgender, many of the workplace issues relating to transgender people overlap with those that affect intersexed people.

Sexual Orientation: The preferred term used when referring to an individual's physical and/or emotional attraction to the same and/or opposite gender. Sexual orientation is not the same as a person's gender identity.

Transgender: An umbrella term referring to a person whose gender identity or gender presentation falls outside of stereotypical gender norms. Terminology related to the term transgender includes the following:

Cross Dresser: One who wears the clothing and accoutrements that are considered by society to be more appropriate for a gender other than the gender that person manifested at birth. Unlike transsexuals, cross dressers typically do not seek to change their physical characteristics and/or manner of expression permanently. Cross dressers are also known as transvestites.

Transitioning: The process through which a person modifies his/her physical characteristics and/or manner of expression to satisfy the standards for membership in a gender other than the one he/she was assigned at birth. Some people transition simply by living as a member of the other gender, while others undergo medical treatment to alter their physical characteristics.

Transsexual: A person who identifies with the roles, expectations and expressions more commonly associated with a sex different from one he/she was assigned at birth. A transsexual often seeks to change his/her physical characteristics and manner of expression to satisfy the standards for membership in another gender (transition). This may or may not include hormone therapy and eventual sex reassignment surgery. Upon transitioning, transsexuals may call themselves male-to-female (MTF) or female-to-male (FTM) to acknowledge their change in appearance to match their gender identity. Whether a person is transsexual has no direct or predictable connection to his/her sexual orientation.

Transsexualism: A medical diagnosis, according to the tenth revision of the World Health Organization's International Statistical Classification of Diseases and Related Health Problems, defined by the consistent (for at least two years) desire to live and be accepted as a member of the opposite sex, usually accompanied by the wish to make one's body as congruent as possible with the preferred sex through surgery and/or hormone treatment. This condition is not a symptom of another mental disorder or a known chromosomal abnormality.⁴

THE TRANSITIONING PROCESS

In the early to mid-1900s, many people who were diagnosed as being gender dysphoric were treated as mentally deranged or otherwise ill. Attempts to “cure” people included electric shock therapy and other severe, and ultimately ineffective, aversion techniques.

Since the early 1960s, treatment strategies have shifted based on the recognition that gender roles are not fixed across cultures and time, that the formation of gender identity is complex, and that a more effective medical approach is to help a person modify his/her body to match his/her gender identity.

The actual stages in a transition are often facilitated by consultation with medical professionals in accordance with established standards of care. Such treatments may include adherence to the Harry S. Benjamin International Dysphoria Association’s recognized standards of care that have been in use since 1979. In general, the process involves the following steps, the duration of which can vary:

- >> initial psychological testing to rule out other diagnoses;
- >> ongoing psychiatric monitoring and counseling over several months to assess the extent of the condition and understand options, consequences and obstacles;
- >> health evaluation for hormone therapy;
- >> administration of hormones generally attributed to the person’s new gender;
- >> continued monitoring to assess reaction to hormone-induced physical changes;
- >> trial living period of at least one year to ascertain level of comfort in reassigned gender (While every person’s transition is deeply personal and unique, most transsexual employees will approach management about their transition at this stage of the process, at which point they will work with management to begin the planning process of implementation, including measures such as changing e-mails, business cards, personnel records, security IDs.);
- >> if the transitioning person so decides, continued hormone administration and life in the reassigned gender is sometimes but not always accompanied by surgical reconstruction of primary and secondary sex characteristics, facial structure, etc.

The therapeutic process has been designed to minimize the chances of making a frivolous or hasty decision to transition. Moreover, in the overwhelming majority of cases, the transition is successful and the person goes on to live a well-adjusted life in the reassigned gender. The degree of success, however, can be influenced by (1) whether the person is able to maintain a stable job and income during transition, and (2) whether he or she works in a supportive work environment.

Amanda Simpson, a senior-level technical adviser at a Fortune 500 company and male-to-female transsexual, told HRC that management can expect some patience and flexibility from transitioning employees. “Most transgender people realize that colleagues will need to take some time to come up to speed with the issues,” Simpson said.⁵

HRC Corporate Equality Index

The HRC Foundation's Corporate Equality Index rates Fortune 500 and other large U.S. businesses on how they treat GLBT stakeholders. In order to receive a score of 100 percent, companies must include the term "gender identity" and/or "gender expression" in their written non-discrimination or equal opportunity employment policies. Prospective employers, consumers and some of the largest institutional investors in the nation use HRC WorkNet's data when making decisions about where to apply their talents, spend their money and concentrate their investments.

THE BUSINESS CASE

While motivated in part out of concern about workplace fairness, both private and public sector employers are incorporating protections for gay, lesbian, bisexual and transgender employees because they see it as a business imperative and as an important component of their diversity initiatives.

Whereas most employees can choose whether to disclose certain personal information at work, transsexuals who plan to stay with the same employer while transitioning do not have that option. Given that a transsexual employee is obligated to "come out" to his/her employer in order to satisfy the requirement to live full-time in his/her new gender role for at least a year before irreversible surgery, employers necessarily become involved in the employee's transition.

Employers that develop and implement workplace strategies that address discrimination against transgender employees can enhance corporate reputation, increase job satisfaction and boost employee morale. Results can include increased productivity, reduced turnover and decreased vulnerability to legal challenges.

CORPORATE REPUTATION

A company's reputation with consumers, current and prospective employees, and other stakeholders can have a profound effect upon its ability to succeed.

"The contributions that are made by the IBM members of the GLBT community accrue directly to our bottom line," says Ted Childs, vice president for global work force diversity for IBM, a recipient of 100 percent on HRC's 2003 Corporate Equality Index. "Our goal is to assemble the most talented work force in our industry, and to use the skills of that diverse team to respond to the needs of our customers. The HRC platform for inclusion is an important social and business issue of today, and consistent with IBM's goal to have the best team, and be the best performer in our marketplace." IBM has a worldwide non-discrimination policy prohibiting discrimination based on gender identity or expression.

Moonhawk River Stone, a workplace diversity trainer on transgender issues, underscores one business rationale for pursuing such policies: "Employers need to assess whether they are willing to risk the negative public image discrimination can bring. People tend to focus on and remember the negative. It only takes one incident of such behavior to create longstanding ill will."⁶

In addition to the HRC Corporate Equality Index, other “recognition” lists focus attention on corporate diversity practices and can underscore the benefits that an open and inclusive work environment can have on an employer’s reputation.

- >> *DiversityInc*, with quarter of a million subscribers, issues an annual *Top 50 Companies for Diversity* list. The HRC Foundation is an adviser in this process and uses its Corporate Equality Index as a guide. More than 50 percent of *DiversityInc*’s readers represent middle and top management in corporate America, and 17 percent are women or minority business owners.
- >> *Business Ethics* magazine uses HRC data, as evaluated and incorporated into KLD Research & Analytics research, in its annual list of *100 Best Corporate Citizens*. Referenced by vendors, investors and job applicants, this list is considered a standard by corporate social responsibility analysts.

COMPETITIVE ADVANTAGE

Employers increasingly see establishing protections for transgender employees as part of an effort to maintain a competitive edge.

“The way we win is by being better than other companies. And we win when our people are better than everyone else’s,” Dennis Liberson, executive vice president for human resources at Capital One Financial, said about his company’s decision to extend protections to transgender employees. “We ask, ‘What we can do to attract the best talent?’ It’s a very business-focused approach.”⁷ Capital One Financial increased its score from 86 percent in 2002 to 100 percent on HRC’s 2003 Corporate Equality Index when it added protections for transgender employees to its corporate-wide non-discrimination statement.

Competition is not always viewed strictly in terms of direct competitors for clients and market share. Businesses — small and large, public and private — benchmark themselves against others in their own industry as well as firms that operate in the same region or compete for employees with the same job skills.

“Business needs to prepare for the future. There is a coming cohort of young employees who choose employers based on their progressive workplace policies. If a company is going to attract the best and brightest employees, it needs to implement policies that are inclusive not only of gender identity, but gender expression,” said River Stone.⁸

CHANGES IN THE WORKPLACE

Employers that are benchmarking on this issue will find a growing number of peers amending their non-discrimination policies to include transgender employees.

- >> According to HRC WorkNet data, as of May 15, 2004, a total of 35 Fortune 500 companies included gender identity or expression in their nondiscrimination policies, 11 of which added such protections in 2003 alone. That was an annual increase of 120 percent over 2001 when only five companies had such protections.

- >> HRC is aware of 146 other private sector employers, universities, and state and local government employers that include gender identity in their non-discrimination statements at this writing.
- >> Most Americans, 61 percent, believe there should be workplace laws protecting transgender people, according to a poll administered in 2002 by Lake Snell Perry & Associates for the HRC Foundation. Additionally, most say they could work with a transgender person: 48 percent of respondents said they would have no problem working with a transgender person, while 26 percent said they could despite minor discomfort. Only 8 percent of respondents said they would not be willing to work with a transgender person.
- >> Just as knowing someone who is gay, lesbian or bisexual makes a person more inclined to support non-discrimination policies based on sexual orientation, knowing a transgender person is associated with more positive feelings toward transgender people, according to this poll.

CHANGES IN THE LAW

Despite the fact that few legal protections exist to protect employees from discrimination based on gender nonconformity, recent court decisions indicate that there is a growing consensus that transgender people are covered under state and federal sex discrimination statutes.

Federal Court Rulings

In the past few years, an increasing number of federal courts have interpreted federal sex discrimination laws to cover gender identity and expression, particularly in the area of impermissible sex stereotyping. In practical terms, this could mean that employers could be held accountable for anti-transgender discrimination in their workplaces.

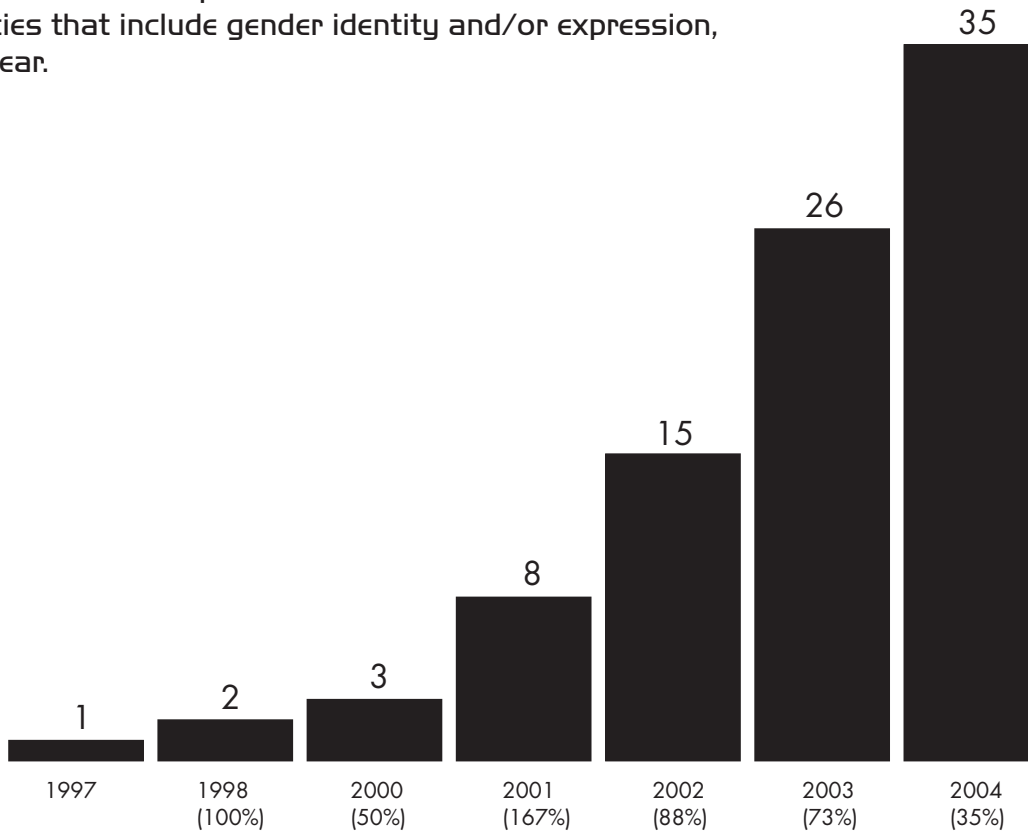
- >> In *Smith v. City of Salem, Ohio*, the U.S. Court of Appeals for the 6th Circuit ruled on June 1, 2004, that a preoperative male-to-female transsexual could bring a claim of sex discrimination and sex stereotyping under Title VII of the Civil Rights Act of 1964.⁹ Thus, the 6th Circuit became the first in the country to rule that Title VII protects transgender people in that it covers discrimination based both on biological sex and socially prescribed expectations based on gender. The court said that even discrimination based on a person's gender identity was enough to permit him or her to use Title VII to challenge the discrimination. This ruling logically followed *Price Waterhouse v. Hopkins* (below). Many consider *Smith v. City of Salem, Ohio*, an important ruling that will move employers toward recognizing that the sex stereotyping of transgender people, which has so negatively affected these workers, is illegal.
- >> In *Price Waterhouse v. Hopkins*, the U.S. Supreme Court held in 1989 that harassment directed at a person because that person does not conform to traditional sex stereotypes is covered by Title VII.¹⁰
- >> In *Rosa v. Park West Bank & Trust Co.*, the U.S. Court of Appeals for the 1st Circuit reinstated an Equal Credit Opportunity Act claim in 2000 on behalf of biological male plaintiff who alleged that he was denied an opportunity to apply for a loan because he was not dressed in "masculine attire."¹¹

Employers with written non-discrimination policies that include gender identity and/or expression

| | |
|--|------------|
| Fortune 500 | 35 |
| Other Private Sector Employers (Includes Non-Profits and Labor Organizations) | 56 |
| Colleges and Universities | 12 |
| TOTAL | 103 |

data as of May 15, 2004

Fortune 500 Companies with written non-discrimination policies that include gender identity and/or expression, by year.



(year over year increase; data as of May 15, 2004.)

Congressional Non-discrimination Policies

There is no pending federal legislation to outlaw anti-transgender workplace discrimination, although the Human Rights Campaign, the Gender Public Advocacy Coalition, and other allied organizations lobby for the inclusion of gender identity and expression in federal workplace anti-discrimination legislation. As of June 8, 2004, 151 members of the 108th Congress had signed a statement saying, “The sexual orientation and gender identity or expression of an individual is not a consideration in the hiring, promoting or terminating of an employee in my office.” Signatories included 23 senators and 128 representatives, of whom 13 are Republicans, 136 are Democrats, and two are independents. See the Pledge Project on HRC’s website (www.hrc.org) for more information.

At this writing, four states — California, Minnesota, New Mexico and Rhode Island — explicitly include “gender identity” in their anti-discrimination laws. Two other states enacted provisions in 2003 that ban discrimination against transgender state employees — Kentucky and Pennsylvania. Several other states — Connecticut, Florida, Illinois, Hawaii, Massachusetts, New Jersey, New York, Vermont — and the District of Columbia have interpreted their sex, sexual orientation, personal appearance or disability discrimination statutes to prohibit certain forms of discrimination against transgender people. Additionally, the number of local jurisdictions adding protections for transgender workers is increasing at a record pace. Fourteen cities and two counties implemented protections for private sector employees on the basis of gender identity or expression in 2002 alone, and eight more added such protections in 2003. This makes a total of 61 cities and counties that as of May 15, 2004, provided some form of protection for transgender workers.

Employers with operations in multiple jurisdictions should add protections for transgender employees in order to ensure all employees are treated consistently throughout the organization and in compliance with the law.

JOB SATISFACTION, EMPLOYEE MORALE

Work is not merely a means to meet basic needs. Many people take pride in their labor and seek emotional satisfaction from meeting the challenges work can offer.

Transgender employees who do not feel valued or safe at work may not be able to perform to the best of their abilities, which in turn can affect the performance of an entire unit or team. Here are three examples of how different employers managed the workplace transition of their employees:

>> Jason, a female-to-male transgender person employed at an Ivy League university, told HRC that his immediate supervisor’s reaction to his decision to transition was negative. Dismissing Jason’s suggestion to provide awareness training and an open forum in which colleagues could ask questions, Jason’s supervisor refused to help acclimatize his colleagues to his transition. As a result, some of Jason’s colleagues distanced themselves from him, perhaps out of fear and prejudice, perhaps out of ignorance. Meanwhile, certain of Jason’s male colleagues expressed discomfort with his use of the men’s restroom. While the head of human resources eventually supported Jason’s right to use the restroom that corresponds with his gender identity, without clear communication on the issue from management, it remains a source of discomfort for both Jason and his colleagues. Additionally, before coming out as transgender, Jason had received no written complaints about his work and there was no indication in his personnel file of poor performance. Though it is in

violation of the university's own policy to add performance complaints to an employee's personnel file without notifying that employee, Jason later discovered that e-mail correspondence from colleagues charging him of "uselessness" and "incompetence" had been placed in his file. Jason told HRC that he is looking for new employment.¹²

- >> James MacGregor Halleman, a female-to-male transsexual, said that management made it difficult for him during his transition by advising him that he could not use the men's locker and washing facilities until he physically resembled a biological male in all respects. Until then, Halleman, who is a member of the United Steel Workers of America Local 2599/27, national board member of the National Transgender Advocacy Coalition, and member of the diversity board of Pride At Work (the GLBT organization within the AFL-CIO), was instructed to use the women's restroom. This put him in an increasingly uncomfortable position. As a result, he did not use company restroom facilities for a year. Management began to discuss Halleman's concerns with him only after a local ordinance requiring equal protections for transgender employees was passed.¹³
- >> In contrast, supportive managers can help a transitioning employee and his/her co-workers successfully negotiate a difficult, life-altering change. Dr. Robyn Walters, a male-to-female transsexual, told HRC that she was the fourth person she was aware of to transition in her workplace. At the time, Walters, who at this writing was secretary and media director of the National Transgender Advocacy Coalition, and veteran affairs liaison for the Transgender American Veterans' Association, was consulting for a U.S.-based information technology company. When two female colleagues contested the company's policy allowing Walters to use the restroom associated with her gender identity, management stood behind Walters. Walters, whose employer still does not include the terms "gender identity or expression" in its non-discrimination statement, cautions against assuming that an enlightened management is sufficient to ensure such protections in the workplace. Turnover may result in less educated managers who ignore the needs of its transgender employees. The absence of a formal policy "did not affect my experience," said Walters, "but it could affect someone else's experience, for instance, if he or she would approach an intolerant person in HR."¹⁴

VALUING EMPLOYEES IS GOOD FOR BUSINESS

A wealth of human resources literature indicates that smart employers that make employees feel valued "will gain a crucial competitive edge."¹⁵ According to a 1997 study by the Families & Work Institute, "the quality of workers' jobs and the supportiveness of their workplaces are the most powerful predictors of productivity, job satisfaction, commitment to their employers and retention."¹⁶

Employee morale is often directly linked to productivity. Says Marc Drizin, vice president of Walker Information, an Indianapolis-based research firm, "I think most organizations still don't understand why you need to be good to your workers."¹⁷ Employers that ignore workplace discontent run the risk of periodic productivity slumps as skilled staffers depart for higher-paying positions whenever the labor market surges, said Drizin.

It is important to note that workplace protections for transgender people may also protect people who do not identify as transgender. Providing protections based on gender identity and expression creates a safe environment in which all employees need not worry about how others will perceive their gender. “People who are comfortable and who feel included are more effective as employees — more creative and committed,” according to Suellen Roth, vice president of global policy and diversity at Avaya, a Fortune 500 company and recipient of a perfect score on HRC’s Corporate Equality Index. “That helps the company attract and retain top talent and reach more markets.”¹⁸

TURNOVER AND OTHER COSTS OF DISCRIMINATION

Human capital is arguably the most valuable asset held by an employer today. It is the collective sum of the attributes, life experience, knowledge, inventiveness, energy and enthusiasm that employees invest in their work. Employer expenditures on human capital correspond with its value to the firm; according to the Society for Human Resource Management, 60 percent to 70 percent of a company’s expenditures on average are labor-related.¹⁹

Diego Sanchez, director of communications and marketing at the AIDS Action Committee of Massachusetts, told HRC that most employers “would not knowingly create a hostile work environment for the employees in whom they have invested time and training. Inclusive policies help a company retain valuable employees.”²⁰

Companies that fail to address workplace discrimination against transgender employees will bear the cost in lost potential. Here are just two high-profile examples of the cost of discrimination based on gender identity to an employer:

- >> Lynn Conway underwent sex-reassignment surgery in 1968 and was fired by IBM for being transsexual. Before her termination, Conway had invented a method by which computer processors make multiple calculations simultaneously and dynamically, which consequently led to the creation of supercomputers that can take enormous amounts of data and compile them to look for patterns. In the 1970s, Conway went on to work for the Memorex Corp. at the Xerox Palo Alto Research Center, where her innovations influenced chip design worldwide. Conway has since won many awards and high honors, including election as a member of the National Academy of Engineering, the highest professional recognition an engineer can receive. Conway is currently a professor and associate dean of the College of Engineering at the University of Michigan.²¹ (IBM added the terms “gender identity or expression” to its worldwide anti-discrimination policy in 2002.)
- >> Dana Rivers, a high school teacher in Sacramento, Calif., wrote a letter to colleagues in May 1999 explaining that she was undergoing a sex reassignment surgery from male-to-female. In June of that year, the school board sent a letter to all 1,500 families in the district disclosing Rivers’ status. Four parents wrote back in protest. The school board fired Rivers in September based on those parents’ complaints. Rivers, who had worked in the school for eight years, developed an award-winning program for unmotivated students. Consistently rated by students as one of the best teachers they ever had, Rivers was awarded an \$80,000 grant for the program and won the school’s Stand and Deliver Award for the teacher who

most inspired students.²² She settled her lawsuit against the school board challenging her dismissal for \$150,000, including \$15,000 for legal costs.²³

MITIGATING THE RISK OF A LAWSUIT

Discrimination cases are costly in terms of time, legal fees and good will. Preliminary evidence suggests that companies that have established diversity programs and management systems to address and resolve charges of discrimination and harassment may be less vulnerable to lawsuits and multimillion-dollar penalties.

For instance, in *Cady v. Bristol-Myers Squibb Co.*, a gay man filed suit in 1998 alleging discrimination based on sexual orientation and a hostile work environment resulting from his supervisor's anti-gay comments.²⁴ The court found that while the supervisor's comments were "clearly reprehensible and unpleasant," because the company had acted swiftly, fairly and thoroughly to reprimand the supervisor — it forced him to accept a demotion, benefits reduction, and transfer or be dismissed with a loss of severance pay — the supervisor's comments did not rise to the level of a "hostile work environment."²⁵ Bristol-Myers Squibb had established its policy prohibiting discrimination based on sexual orientation by 1993, when the plaintiff first filed a complaint about his supervisor's comments.

POLICY RECOMMENDATIONS

The following guidelines will assist managers in addressing transgender issues in the workplace.

AMEND NON-DISCRIMINATION OR EQUAL EMPLOYMENT OPPORTUNITY POLICIES

Declare in clear, unequivocal terms, a policy prohibiting discrimination against transgender employees equal to other protected categories by including "gender identity or expression" along with "sexual orientation" among the list of protected categories in your primary, workplace-wide, non-discrimination or EEO policies.

The policy should be in the employee handbook, intranet and anywhere else that you communicate anti-discrimination policies to employees. Make sure that transgender employees are also included in your anti-harassment policy as well as your firm's diversity statements.

ESTABLISH WRITTEN GUIDELINES REGARDING PROCESS AND ROLES THAT CLARIFY RESPONSIBILITIES FOR MANAGEMENT AND STAFF

Institute protocols that make it clear to transitioning employees, their supervisors and other staff who is responsible for issues that arise when an employee transitions.

Such issues include: Who is the primary point of contact in the company charged with helping a transitioning employee manage his/her workplace transition; what is the general schedule for implementing transition-related workplace changes, such as adjustments to personnel and administrative records; what can a transitioning employee expect from management; and what are management's expectations of staff, transitioning employees, and any existing GLBT employee resource group in facilitating a successful workplace transition.

Each transition is different, just as each employee is different. An employer's workplace transition guidelines should be flexible enough to tailor to specific needs of a transitioning employee, while specific enough to provide a consistent framework that eliminates confusion and potential mismanagement.

For example, one employee may prefer a quick start in which all his/her co-workers and peers are informed about the transition on a Friday, after which the employee comes to work the following Monday in his/her new gender role. Another employee in the same organization may prefer a more gradual transition, in which colleagues are notified of the transition plan, but the transitioning employee does not actually come to work in his/her new role for several weeks. However, in both cases, the same designated contact in human resources is responsible for helping each transitioning employee manage his/her individual workplace transition process.

PROVIDE INFORMATION AND TRAINING

Incorporate education about transgender issues in the workplace in diversity training programs.

Andrea Dawn Verville, who works in a homeless veterans shelter and is a male-to-female transsexual, said that “the ‘don't ask, don't tell’ mentality of the [armed services], coupled with social misperception of transgender persons, [has] made transition an edgy experience” for her. The only way to dispel the fear born of ignorance is through education. “Company-sponsored awareness training, including the entire LGBT spectrum ... coupled with definitive HR policies are the foundation for equality in the workplace,” Verville said.²⁶

WORK-LIFE STRESS

Most employers recognize that family, relationships, health and other non-work related issues can affect their employees' productivity, frame of mind and overall morale.

It is often difficult emotionally when an employee discloses the fact that he/she is transsexual to an employer. In many cases, the employee has spent much of his/her life denying or hiding his/her transgender identity to discover upon “coming out” that even limited disclosure can bring great risk. Donna Rose, author of *Wrapped In Blue: A Journey of Discovery*, told HRC that, “Besides coming out to my son, coming out at work was the most difficult thing I've ever done in my life. I was terrified.” Rose is a member of the HRC Business Council, which advises HRC on GLBT workplace issues.

Some transgender people face significant family issues outside of work that may compound workplace transition concerns — ranging from rejection to violence by spouses, children and other family and friends. Employers that actively support a transitioning employee by providing a safe and stable work environment can have profound effect on the employee's overall transition experience and his/her ability to remain productive at work during that time and beyond.

Given that transgender people often face blatant hostility and discrimination, employers should ensure that employees and board members have clear guidance regarding appropriate workplace behavior and the implications of failing to comply with anti-discrimination policies that include gender identity or expression.

At the very least, employers should provide communication and diversity training regarding transgender issues in the workplace comparable to their other policy announcements and training initiatives. For instance, if a company provides elective online training regarding diversity in terms of race or sex, it should provide elective online training regarding transgender issues in the workplace. Nonetheless, the extent of communication and training required will be different for the audience being trained. On the one hand, it may be particularly important to emphasize to board members, as fiduciaries of an organization, how such a policy change affects the firm's competitive advantage or mitigates risk. On the other hand, employees who work on the same team or in the same unit as a transitioning colleague will require more background information about transgender issues specifically and unambiguous instruction regarding how the new policy will be implemented.

Education about transgender issues in the workplace can also take the form of small informal discussions, training modules that are incorporated into larger diversity training sessions, or full-fledged training programs on transgender issues in the workplace conducted by outside trainers and facilitators. HRC provides a list of diversity trainers and other resources online, available from www.hrc.org/worknet and under the resource section of this document to assist employers in developing communications and training appropriate to their workplace.

ENSURE EMPLOYEE PRIVACY

Treat an employee's transgender status as private and confidential.

As of April 2001, employers are required by federal law (the Privacy of Personal Health Information and the Health Insurance Portability and Accountability Act) to keep employee medical information confidential.²⁷ Jamison Green, a workplace diversity trainer and member of the HRC Business Council, offers some practical advice to employers. "When an employee is undergoing a transition that involves the cooperation of others in referring to him or her with the appropriate pronoun, the transition itself becomes a matter of public knowledge, but personal or intimate details about an individual's transition are the employee's personal business and as such are entitled to confidentiality. ... No employee should be required to explain or justify her or his personal life or medical treatment in the workplace."²⁸

CHANGE PERSONNEL AND ADMINISTRATIVE RECORDS

Upon an employee's request, change the employee's name and sex in all personnel and administrative records, including internal and external e-mail and business cards.

Developing systems for addressing situations in which an employee's gender expression does not match certain official identity documents is essential to demonstrating full support for transgender employees. Likewise, extending such measures to customers in situations where official documentation is required will emphasize a business' commitment to diversity and equal treatment for all.

Employers need to be aware, and ensure that all hiring personnel know, that laws regarding changes to gender markers in credit reports and government-issued identification documents can vary from state to state and jurisdiction to jurisdiction. Not all transsexuals undergo sex-reassignment surgery, for instance. However, many jurisdictions require proof of completion of certain procedures before personal documents, such as drivers' licenses and birth certificates, can be updated to reflect a person's new gender.²⁹ Additionally, in October 2002, the Social Security Administration instituted more stringent rules for changing gender markers in SSA records, requiring applicants to provide clinic or medical records or other documents showing that sex reassignment surgery has been completed. Employers should also be aware that the IRS or Social Security Administration may directly contact employers if an employee's name does not match in these systems.³⁰ As a result, employers should provide guidance to managers in the event that they learn of an employee's transgender status from other sources in the normal course of doing business rather than from the employee him or herself.

GRANT RESTROOM ACCESS ACCORDING TO AN EMPLOYEE'S FULL-TIME GENDER PRESENTATION

Permit an employee to use restrooms that correspond to his/her full-time gender presentation, regardless of what stage that individual is in terms of his/her transition process.

Employers must permit use of facilities by any individual without infringing on the privacy of other users. Restroom stalls with locking doors generally fulfill this requirement. See Frequently Asked Questions for more information.

GRANT LOCKER ROOM ACCESS ACCORDING TO AN EMPLOYEE'S FULL-TIME GENDER PRESENTATION

Unless there is unavoidable nudity, grant locker room access according to an employee's full-time gender presentation regardless of what stage that individual is in terms of his/her transition process.

If nudity is unavoidable, provide that employee with alternative accommodations that maintain respect and dignity. Such accommodations could include: use of a private area within the public area, such as a bathroom stall with a door or area separated by a curtain; a separate changing schedule in the private area; or use of a nearby private area, such as a restroom.

IN THE CASE OF A DRESS CODE, MAKE IT GENDER-NEUTRAL AND APPLY CONSISTENTLY

If an employer has a dress code, it should modify it to avoid sexual stereotypes and then enforce it consistently.

For example, requiring men to wear suits and women to wear skirts or dresses, while legal, is based on sexual stereotypes. Alternatively, codes that require “attire professionally appropriate to the office or unit in which an employee works” are gender-neutral.³¹ In any event, an employer may face legal ramifications if it enforces such codes arbitrarily. See Frequently Asked Questions for more information.

WHEN CREDENTIALS AND GENDER PRESENTATION DO NOT MATCH

In certain industries, specific employees are required to obtain official certification in order to do their jobs. Pilots in the airline industry are one such example.

A diversity executive at American Airlines told HRC that the issue of credentials not matching gender expression came up when some of the company’s pilots transitioned. Because the Federal Aviation Administration regulates pilot certification, the company tried to educate the FAA about the needs of their transsexual employees. While “the issue is not totally resolved” (for instance, employees taking certain medications during transition are prohibited from flying), the company has successfully seen several pilots through the transition process since implementing the policy.

Furthermore, the company extended its non-discrimination policy to customers whose passports or drivers’ licenses do not match their gender expression. The company instituted a policy of accepting identification that does not match the gender expression of transsexual passengers and, to this executive’s knowledge, has not had an issue with security or compliance since the policy was implemented. Based on her company’s experience, this executive advises other employers to be ready to extend their non-discrimination policies to their customers.

Given the overlapping federal, state and local regulatory issues regarding professional licensing, HRC recommends that employers consult with legal counsel to consider how best to address this issue.

REMOVE HEALTH INSURANCE AND SHORT-TERM DISABILITY EXCLUSIONS FOR MEDICALLY NECESSARY TREATMENTS AND PROCEDURES

Wherever possible, remove exclusions for medically necessary treatments and procedures, such as those defined by the Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders,³² from company-provided health care and short-term disability coverage.

Even when a transgender person has health insurance coverage, most health insurance plans exclude many of the procedures outlined as medically necessary for transsexuals. Labeled the “transgender exclusion,” disqualified treatments may include psychological counseling for initial diagnosis and ongoing transition assistance, hormone replacement therapy, doctor’s office visits to monitor hormone replacement therapy and sex-reassignment surgery.³³

Access to any health care is a pressing issue for many transgender people. According to a 1999 study by the San Francisco Department of Public Health, more than 50 percent of transgender people did not have any form of health insurance.³⁴ The Transgender Law Center has documented cases in which health insurance companies and medical providers have denied coverage to transgender people when they became aware of an applicant’s transgender status and/or prior treatment for GID. According to a survey conducted jointly by the National Center for Lesbian Rights and the Transgender Law Center, more than 30 percent of respondents indicated that they had been discriminated against while trying to access health care.³⁵

Employers that are interested in offering such benefits may consider self-insuring. The few company representatives who indicated to HRC that their company offers at least one health plan that covers certain medical procedures such as sex-reassignment surgery are self-insured.³⁶ Unfortunately, small employers may find such options out of reach.

EXTEND WELLNESS-RELATED BENEFITS TO TRANSGENDER EMPLOYEES

Modify health- or disability-related leave policies to allow transgender employees to take leave associated with medically necessary treatments and procedures.

Recognizing that removing “transgender exclusions” from health insurance policies may take longer to implement, employers should modify the policies over which they have complete control. Employers often offer a range of additional benefits that can have an effect on a transgender employee’s ability to pursue services or procedures essential to his or her health and wellness. For instance, according to a 2001 benefits survey conducted by the Society for Human Resource Management, 75 percent of respondents reported that their firms offered short-term disability, 84 percent offered long-term disability and 62 percent offered a paid time off plan in which sick, vacation and personal days are managed as a single basket.³⁷ Whether and to what extent an employer offers such benefits to employees is determined solely by the employer; medically necessary procedures in a gender transition should be treated the same as other criteria in requesting and granting such leave.

TREAT A TRANSGENDER EMPLOYEE'S SPOUSE AS YOU DO OTHER EMPLOYEES' SPOUSES IN THE PROVISION OF EMPLOYMENT BENEFITS

Because different jurisdictions have different rules concerning changing gender markers on official documents, transgender employees face increased challenges to marry legally after transitioning.³⁸ Courts have ruled inconsistently on the legal validity of marriages — either between same-sex or opposite-sex couples — entered into after a transgender person has transitioned. Nonetheless, there are a number of transsexual people who were legally married before transitioning, and thereafter find themselves in the position of being in a married same-gender relationship.³⁹ One way to ensure that employees' partners are treated equitably is to extend domestic partner benefits to both opposite- and same-sex couples.

SAN FRANCISCO REMOVES TRANSGENDER EXCLUSION FROM CITY AND COUNTY HEALTH COVERAGE

The city of San Francisco is thus far the only jurisdiction in the United States to remove exclusion for gender identity disorder from its health coverage of city and county employees.

In effect since July 2001, the city's health plan offers transexual employees coverage for transition-related treatment including surgery performed by a qualified provider as part of a treatment plan conforming to the Harry Benjamin Standards of Care. Furthermore, employees who require psychotherapy for gender identity disorders, gender dysphoria or transsexualism, and/or cross-sex hormones, may receive them under routine psychotherapy and pharmacy benefits. Eligibility requirements of one year of membership in the San Francisco Health Service System, either as an employee, retiree or dependent, will be eliminated as of July 1, 2004, because they were against the rules of the Department of Managed Care.⁴⁰ Many expect that this will cause insurers offering such coverage to extend them to other employers as well.

FREQUENTLY ASKED QUESTIONS

Aren't protections for transgender employees covered elsewhere, such as under the Americans with Disabilities Act, sex discrimination laws or protections based on sexual orientation?

Not consistently.

ADA: Gender Identity Disorder is specifically excluded from coverage under the Americans with Disabilities Act. In a limited number of states, a GID diagnosis could qualify as a disability for which medical coverage could be available, and to which disability discrimination provisions could apply. Even in such states, the ADA would not cover transgender employees who are not transsexual.

Discrimination based on sex: Title VII of the Civil Rights Act of 1964 prohibits workplace sex discrimination. In the past, federal courts ruled that transgender people are not protected under Title VII. More recently, although this has begun to change, there still is nothing close to secure or comprehensive protections for transgender people under sex discrimination statutes.

Discrimination based on sexual orientation: While for many people, sexual orientation and gender expression are interwoven, a person's gender identity does not necessarily correspond with his or her sexual orientation. Furthermore, sexual orientation has not been considered the same thing as gender identity or expression under the law.

What is the employer's obligation regarding restrooms?

Employers should grant restroom access according to an employee's full-time gender presentation. Several major firms, including IBM, Lucent Technologies Inc., Apple Computer and American Airlines, have successfully addressed this issue in their own workplaces.

In the United States, employers are required to provide workers reasonable access to restroom facilities. The U.S. Department of Labor Occupational Safety and Health Administration requires that employers "make toilet facilities available so that employees can use them when they need to do so," and "the employer may not impose unreasonable restrictions on employee use of the facilities."⁴¹

Nonetheless, HRC recognizes that restroom access can be sensitive for both transgender and other employees. Some employers implement workplace-wide policies, while others leave it to the local facility or office to create a solution that fits the needs of the unit and transsexual employee. In sum, there is no single solution that will work in every workplace, and as a result, employers handle restroom access issues with respect to their known transgender employees in a

variety of ways. All employers need to find solutions that are safe, convenient and respect the transgender employee's dignity.

Working with your transgender employees to devise a practical and dignified solution to restroom access issues is essential.

How does a company's dress code apply to transgender employees?

If an employer has a dress code, it should modify it to avoid sexual stereotypes and enforce it consistently.

The same dress codes and rules of behavior apply to transgender employees as they do to other employees. Employers that have dress codes require only that their transgender workers abide by these codes. Many employers ask transitioning employees — who are often advised by medical professionals to dress for one year as the gender to which they are transitioning before undertaking any surgical procedures — to present consistently throughout the transition.

Generally speaking, employers have a right to establish employee dress and grooming guidelines during work hours if they are reasonable and serve a legitimate business purpose. Such a purpose may include safety, such as requiring employees to wear closed toe shoes, goggles or gloves. Certain professions, such as law enforcement, require employees to wear uniforms so that they are clearly recognizable to the public. Other employers implement dress codes in order to maintain a certain

HOW SOME EMPLOYERS HAVE ADDRESSED RESTROOM ACCESS ISSUES IN THEIR WORKPLACES:

- >> Employees may use any restroom that corresponds with their full-time gender presentation. Management requires only that after notifying HR of a decision to transition, the employee present according to his or her gender identity consistently thereafter.
- >> A transitioning employee may agree to use a unisex restroom, if one is available and reasonably accessible, for some period during the process of transition.
- >> Employees may use a restroom that corresponds with their biological sex; employees who have completed sex reassignment surgery may use restrooms that correspond with the biological sex to which they transitioned. Please note that HRC does not recommend this as an appropriate response to the restroom access needs of their transgender employees. Employers should also note that new Health Insurance Portability and Accountability Act regulations reinforce the confidentiality of employee medical information. As a result, unless an employee tells management directly, management may not know whether or when an employee has had sex-reassignment surgery, and therefore may have difficulty implementing a policy based on this standard.⁴²

San Francisco's experience with health care costs

The city of San Francisco originally administered its transgender benefits through the city's self-funded preferred provider organization, Beech Street Corp. Lifetime surgical benefits were capped at \$50,000 and required a standard \$250 deductible, after which the policy offered a 15 percent co-pay in-network and 50 percent co-pay out-of-network. Until 2003, the city's HMO plan providers — Health Net, Kaiser Permanente and Blue Shield — were not able to offer such coverage. A San Francisco Health Service System employee told HRC that the city's HMO providers did receive authorization in 2003 from the Department of Managed Care, which operates as a control over the HMO industry in California, to eliminate the transgender exclusions from their coverage and begin to provide transgender-related health care. The city is contracting with the HMOs in covering such procedures as of July 1, 2004. To comply with Department of Managed Care rules and ensure that equal benefits are provided to both female-to-male transsexuals and male-to-female transsexuals, the city will raise the lifetime cap to \$75,000 and remove the requirement of one year of membership in the Health Service System.

image with customers and competitors. Yet other employers implement sex-specific dress codes, which they can do legally as long as the code does not favor or affect one gender over another.⁴³

Employers should note that they do not have right to establish codes that cover an employee's dress and grooming habits during non-work hours. As a result, cross dressing off the job should be of no concern to an employer.

How much will it cost the company to prohibit discrimination based on gender identity and/or expression?

Employers that have already added gender identity or expression to their non-discrimination statements say that the expenses they incurred have been negligible. While there are up front costs for HR staff and others to gather background information to help the company understand the implications of enacting the policy, employers consider this part of the normal overhead associated with any policy consideration. Follow-on training and education costs are integrated into company-wide diversity training education.

Health Insurance: There are costs if an employer decides to cover surgical transition, hormone replacement therapy and other necessary procedures. However, large employers report that these expenses are not burdensome.

Such costs vary depending on three things: (1) the number of employees who make claims for coverage; (2) the services and procedures requested; and, (3) the employer's total number of employees, which affects the additional cost it would incur and pass back to employees to cover the new benefits.

The numbers: Individual employers indicate that the number of employees taking advantage of newly offered health insurance benefits is actually quite small. For instance, the city of San Francisco, which employs more than 27,000 people, originally estimated that as many as 35 employees might use the new benefits in the first year. In fact, at this writing, only five employees had filed claims under the plan since its inception in 2001.

There is limited statistical data on the total number of transsexuals in America, and what official data exists is both contested and dated.⁴⁴ The American Psychiatric Association reported in 1994 that "data from small countries in Europe with access to total population statistics and referrals suggest that roughly 1 per 30,000 adult males and 1 per 100,000 adult females seek sex reassignment surgery."⁴⁵ Researchers in the Netherlands, which offers transgender-related health benefits in its universal health care plan, calculated

the prevalence of male-to-female transsexualism at 1 in 18,000 and female-to-male at 1 in 54,000 in 1986.⁴⁶ The most recent prevalence information from the Netherlands for the transsexual end of the gender identity disorder spectrum is 1 in 11,900 males and 1 in 30,400 females.⁴⁷ In contrast, Lynn Conway, a professor of electrical engineering and computer science at the University of Michigan who has investigated prevalence data, estimates the frequency of male-to-female transsexualism in the United States in the range of 1 in 500 to 1 in 2,500.⁴⁸

Many assume that the figures cited by the U.S. psychiatric establishment dramatically undercount the population of transgender people. For instance, these figures do not account for people who have not yet, cannot (for medical, financial or other reasons), or choose not to undergo sex reassignment surgery. Nonetheless, many transsexuals in these categories may require — and are sometimes denied — other health care treatments specific to their needs during transition such as psychological counseling or hormone replacement therapy.

Cost of procedures: Cost data related to health services and procedures specific to transsexual people's needs also varies. A city of San Francisco Health Service System employee told HRC that employees were charged an additional \$1.70 premium per pay period to cover expected additional costs associated with coverage of sex-reassignment surgeries. According to the spokesperson, since the number of employees taking advantage of the benefits is much lower than expected, the costs are likewise lower than expected. The system reduced the premium charged to employees to \$0.85 as of July 1, 2004.

According to Mary Ann Horton, who is affiliated with Transgender At Work, a consulting firm that provides resources to employers and transgender employees, the average costs associated with surgical transition are approximately \$25,000 over a five-year term of employment. This estimate includes \$5,000 per year for two years of counseling with one hourly session per week, \$10,000 for the surgery itself, and \$1,000 per year over five years for prescription drugs.⁴⁹ Horton writes that “most male-to-female transsexuals go to doctors charging between \$8,000 and \$13,000 for the surgery itself. ... Most female-to-male transsexuals have only [chest] surgery and possibly a hysterectomy, costing from \$4,000 to \$10,000. Only a few complete the [genital] surgery, [which can cost] ... up to \$50,000.”⁵⁰

Depending on an employer's experience with health care costs, these numbers can appear high. However, when compared to the costs of other more common health care expenditures, the costs of coverage specific to transgender people's needs are comparable, or lower. For example, according to the American Association of Health Plans, the most common disease management programs in health plans are those for diabetes, asthma, and congestive heart failure.⁵¹ The American Diabetes Association reports that the per capita annual cost of health care for people with diabetes was \$13,243 in 2002.⁵²

How many employees will this policy affect? Why should my employer consider amending its policy for a small number of people?

The overall transgender population is composed of many who do not identify as transsexual but whose appearance does not conform to gender stereotypes. As a result, gender stereotypes can affect any number of people — from women who appear to be “too masculine” to men who appear to be “too feminine.”

Furthermore, the fact that there are relatively few transsexuals in the United States and around the world is not a valid justification for ignoring workplace discrimination against transsexual people. Not only is workplace discrimination wrong, but unchecked discrimination in the workplace on the basis of non-job-related characteristics distracts the victim, and the perpetrator, from the job at hand.

Finally, it is important for employers to note that discrimination against transgender people in the workplace affects not only the transgender employees, but their entire team. Moonhawk River Stone says that for transsexuals, their employers and colleagues, “everyone transitions when a transsexual person comes out in the workplace. Transition is not just a practical process, but it is inherently an emotional and psychological process for everyone.”⁵³

Savvy employers will also realize that an employee who transitions in the workplace provides management an opportunity not only to present information that will help allay people’s immediate concerns, but an occasion to reiterate expectations of workplace fairness.

Will some employees voice religious objections or other concerns?

Most employees will accept an employer’s right to set workplace policies. Certain employees may not agree with an employer’s decision to include protections for transgender workers in anti-harassment and non-discrimination policies, just as they may not agree with other workplace policies. Workplace policies are not about changing people’s beliefs, but preventing inappropriate workplace behavior. Such policies further underscore a common workplace value of judging workers solely on their ability to do a job. Most employers find that when they reiterate this message, workplace discontent with non-discrimination policies dissipates. Employers can often reduce any remaining employee discomfort and encourage further understanding through training and education.

Will some customers voice religious objections or other concerns?

Most employers with whom HRC spoke said that the vast majority of their customers took no notice of their policy change, and those who did praised the company for the change. Nonetheless, certain customers may not agree with an employer's decision to include protections for transgender employees in anti-harassment and non-discrimination policies. Again, the issue is about ensuring workplace fairness, not changing peoples' beliefs.

Concern about customer response is usually related to the visibility of the company policy outside of the organization, which sometimes arises when a transgender employee has a job in which she or he works directly with customers. Many employers have chosen to handle customer grievances as they arise. In any case, employers need to work with employees to establish locally appropriate protocols for addressing potential negative customer reaction to transgender employees.

Some religious political organizations have attempted to damage companies' reputations because of their GLBT-friendly policies. For example, the Southern Baptist Convention announced a boycott of Disney in 1997 and other right-wing groups banded together in an attempt to drive customers away from American Airlines in the late 1990s. These efforts did not make a dent in the corporate bottom line. With the help of HRC and other GLBT advocacy organizations, these companies have increased their share of the GLBT market substantially — more than offsetting any impact from religious pressure.

APPENDIX I.

RESOURCES AND TRAINERS

PUBLICATIONS ON TRANSGENDER ISSUES IN THE WORKPLACE

Brown, Mildred L. and Chloe Ann Rounsley. 1996. *True Selves: Understanding Transsexualism — For Families, Friends, Co-Workers, and Helping Professionals*. San Francisco: Jossey-Bass Publishers.

Cole, Dana. 1992. *The Employer's Guide to Gender Transition*. Waltham, MA: International Foundation for Gender Identification.

Currah, Paisley, Shannon Minter and Jamison Green. 2000. *Transgender Equality: A Handbook for Activists and Policymakers*. Washington, DC: The Policy Institute of the National Gay & Lesbian Task Force; San Francisco: The National Center for Lesbian Rights National Center for Lesbian Rights.

Green, Jamison. 2004. *Becoming a Visible Man*. Nashville: Vanderbilt University Press.

Kirk, Sheila, M.D., and Martine Rothblatt, J.D. 1995. *Medical, Legal & Workplace Issues for the Transsexual*. Blawnox, PA: Together Lifeworks.

Rose, Donna. 2003. *Wrapped in Blue, A Journey of Discovery*. Round Rock, TX: Living Legacy Press.

Walworth, Janis, M.S. 1998. *Transsexual Workers: An Employer's Guide*. Bellingham, WA: Center for Gender Sanity.

—. 1999. *Working with Transsexuals: A Guide for Coworkers*. Bellingham, WA: Center for Gender Sanity.

SELECT LEGAL CASES

Bibby v. Philadelphia Coca-Cola Bottling Co., 260 F.3d 257 (2nd Cir. App. 2002).

After 14 years with the same employer, a gay man disclosed his sexual orientation to supervisors when he became ill on the job. On the day he returned to work after reinstatement following grievance arbitration, he was verbally and physically assaulted by a co-worker. He filed a suit alleging sex discrimination. The 2nd Circuit Court of Appeals ruled in 2002 that a plaintiff may be able to prove a claim of sex discrimination by showing that the “harasser’s conduct was motivated by a belief that the victim did not conform to the stereotypes of his or her gender.”

Cady v. Bristol-Myers Squibb Co., 97-55496 (9th Cir. App. 1998).

A gay man filed suit in 1998 alleging discrimination based on sexual orientation and hostile work environment resulting from his supervisor's anti-gay comments. The court found that while the supervisor's comments were "clearly reprehensible and unpleasant," because the company had acted swiftly, fairly and thoroughly to reprimand the supervisor — it forced him to accept a demotion, benefit reduction, and transfer or be dismissed with a loss in severance pay — the supervisor's comments did not rise to the level of a "hostile work environment."

Oncala v. Sundowner Offshore Services Inc., 523 U.S.75 (1998).

A man who had been physically assaulted and threatened with rape by male co-workers sought help from supervisors and, when this produced no remedial action, he quit out of fear for his safety. He filed a complaint against his employer, alleging sexual harassment. The U.S. Supreme Court held that gender stereotype-based sexual harassment against a gender-nonconforming employee may violate Title VII.

Phillip W. Barnes v. City of Cincinnati, 00-CV-780 (U.S. Dist. Ct. Southern District of Ohio, 2003).

A federal jury awarded more than \$300,000 to a transsexual police officer of more than 22 years who said the city discriminated against her by denying her promotion to sergeant.

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

The U.S. Supreme Court held in 1989 that harassment directed at a person because that person does not conform to traditional sex stereotypes is covered by Title VII. In this case, the plaintiff, a female senior manager in an accounting firm, sued the company when she was denied partnership in the firm because she was considered "macho."

Rosa v. Park West Bank & Trust Co., 214 F.3d 213 (1st Cir. 2000).

The U.S. Court of Appeals for the 1st Circuit reinstated an Equal Credit Opportunity Act sex discrimination claim in 2000 on behalf of biologically male plaintiff who alleged that he was denied an opportunity to apply for a loan because he was not dressed in "masculine attire."

Smith v. City of Salem, Ohio, 03-3399 (6th Cir. App. 2004).

The 6th Circuit Court of Appeals ruled that the U.S. District Court for the Northern District of Ohio had erred in rejecting the claim by a male-to-female transsexual of sex stereotyping under Title VII of the Civil Rights Act of 1964. The plaintiff, a lieutenant in the Salem Fire Department had worked for seven years without any negative incidents when the city disciplined him and tried to force him to quit her job while he was in the early stages of gender transition. In making this ruling, the 6th Circuit became the first court in the country to rule that Title VII's sex discrimination protections cover transgender people. The court said that the Price Waterhouse Supreme Court ruling that held that sex stereotyping was an impermissible form of sex discrimination applied. Furthermore, the court ruled that the plaintiff could bring a claim of gender discrimination under a civil rights law, 42 U.S.C. Section 1983, which applies when the defendant is a governmental agency.

DIVERSITY TRAINERS AND ORGANIZATIONS THAT SPECIALIZE IN TRANSGENDER ISSUES

HRC WorkNet is the definitive source of data on workplace policies affecting GLBT employees. See www.hrc.org/worknet and search the HRC WorkNet database for policies by market sector, geographic location or type of policy. HRC's WorkNet staff is also available for consultation and can direct you to additional resources, including contacts at companies that have already implemented such policies. Contact HRCWorkNet@hrc.org for more information.

This list of resources is intended for informational purposes only. It does not constitute and should not be regarded as an endorsement by the Human Rights Campaign or the Human Rights Campaign Foundation.

Many of the organizations and individuals listed below provide multiple products and services. A list of additional trainers is available on HRC's Web site through www.hrc.org/worknet.

CONSULTANTS

Center for Gender Sanity

Contacts: Janis Walworth and Michele Kammerer

Phone: 360/398-2878

E-mail: info@gendersanity.com

Website: www.gendersanity.com

A consulting service for transsexuals who plan to transition on the job, their co-workers, and their employers.

Jamison Green & Associates

Contact: Jamison Green

Phone: 510/393-4785

Fax: 510/675-9385

E-mail: james@jamisongreen.com

Website: www.jamisongreen.com

Jamison Green specializes in transgender awareness training and policy development for corporations, government agencies, law enforcement officers, social service providers and professional groups (physicians, attorneys, psychologists, etc.). Working solo or with selected associates as required for each client, Green has special expertise in assisting management and co-workers in alleviating concerns surrounding transgender and transsexual employees, clients or customers. Since 1990, he has presented educational programs or delivered keynote addresses at professional conferences across the United States and around the world. Green is the author of *Becoming a Visible Man* (Vanderbilt University Press, 2004), and has been an internationally respected leader in the transgender community for more than 12 years. Green is an HRC Business Council member.

RiverStone Consulting

Contact: Moonhawk River Stone

Phone: 518/446-1261

Fax: 518/446-1256 (not a dedicated line — prearrangement necessary)

E-mail: HawkRStone@aol.com

Moonhawk River Stone is a consultant to employees, employers, human resources professionals and employee resource groups regarding all aspects of gender transition in the workplace. He is an educator and trainer on transgender issues, gender transition in the workplace, and has a private psychotherapy practice specializing in all aspects of transgender experience. He has successfully transitioned people for over 15 years. His book, *Making It Work: Successful Gender Transition in the Workplace*, was published in April 2004.

Donna Rose

Contact: Donna Rose

Phone: 512/736-4411

E-mail: donna@donnarose.com

Website: www.donnarose.com

Donna Rose is a writer, speaker and advocate for the transgender community. Her memoir, *Wrapped In Blue: A Journey of Discovery* (Living Legacy Press, 2003), contains one of the most personal and comprehensive accounts of the mental, physical and emotional challenges involved in a gender transition. Rose's book is used as a textbook at a number of major universities. Her webpage is a source of information and support both for the trans community and for those looking for information. Rose is an HRC Business Council member.

RESEARCH AND ADVOCACY ORGANIZATIONS

Gay and Lesbian Advocates and Defenders (GLAD)

Primary contact: Jennifer Levi

Senior Staff Attorney

Phone: 617/426-1350

Website: www.glad.org

New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity or expression. Litigates, advocates and educates in all areas of gay, lesbian, bisexual and transgender civil rights and the rights of people living with HIV. GLAD has a full-time legal staff and a network of cooperating attorneys across New England.

Gender Education & Advocacy Inc.

E-mail: info@gender.org

Website: www.gender.org

A national organization providing web-based educational resources dedicated to the health, safety and civil rights of all gender-variant people.

Gender Public Advocacy Coalition (GenderPAC)

Primary contact: Riki Wilchins, Executive Director

Phone: 202/462-6610

E-mail: gpac@gpac.org

Website: www.gpac.org

A national advocacy organization working to ensure every American's right to a gender free from stereotypes, discrimination and violence, regardless of how they look, act or dress or how others perceive their sex or sexual orientation. The Workplace Fairness Project assists major corporations and unions in adding gender protection to their anti-discrimination policies.

International Foundation for Gender Education

Phone: 781/894-8340

Fax: 781/899-5703

E-mail: info@ifge.org

Website: www.ifge.org

Founded in 1987, IFGE is a leading advocate and educational organization for promoting the self-definition and free expression of individual gender identity. Not a support group, it is an information provider and clearinghouse for referrals about anything that transgresses established social gender norms. IFGE maintains the most complete bookstore on the subject of transgenderism anywhere. It also publishes the leading magazine providing reasoned discussion of issues of gender expression and identity, including crossdressing, transsexualism, FTM and MTF issues spanning health, family, medical, legal, workplace issues and more.

National Center for Lesbian Rights

Primary contact: Shannon Minter, Legal Director

Phone: 415/392-6257

Fax: 415/392-8442

Website: www.nclrights.org

A national legal resource center with a primary commitment to advancing the rights and safety of lesbians and their families through a program of litigation, public policy advocacy, free legal advice and counseling, and public education. In addition, NCLR provides representation and resources to gay men and bisexual and transgender individuals on key issues that also significantly advance lesbian rights. Co-sponsors with Pride Law Fund the Transgender Law Project, an effort to create effective and lasting legal advocacy for the San Francisco transgender community. Published with the National Gay and Lesbian Task Force Policy Institute *Transgender Equality: A Handbook for Activists and Policymakers*.

National Center for Transgender Equality

Primary contact: Mara Keisling, Executive Director

Phone: 202/639-6331

Fax: 202/393-2241

E-mail: MKeisling@NCTEquality.org

Website: www.nctequality.org

A social justice organization working to make transgender people safe from discrimination and violence, NCTE provides a national voice on fairness and equality for transgender and other gender-different people in Washington and provides resources and assistance to empower and strengthen localized efforts around the country.

National Gay and Lesbian Task Force

Primary contact: Lisa Mottet, Transgender Civil Rights Project Legislative Lawyer

Phone: 202/639-6308

Fax: 202/393-2241

E-mail: lmottet@ngltf.org

Website: www.ngltf.org

A national progressive organization working for the civil rights of gay, lesbian, bisexual and transgender people, with the vision and commitment to building a powerful political movement.

National Transgender Advocacy Coalition

E-mail: info@ntac.org

Website: www.ntac.org

Works to reform societal attitudes and the law to achieve equal rights for the transgender and other gender-diverse individuals.

Out & Equal

Primary contact: Selisse Berry, Executive Director

Phone: 415/808-4272

E-mail: info@outandequal.org

Website: www.outandequal.org

National nonprofit devoted to LGBT community in workplace settings. Hosts an annual workplace summit. Its Building Bridges Diversity Training Program is designed to help employers break down the barriers between LGBT and straight employees by opening up communication and creating a healthier workplace.

Pride At Work

Primary contact: Jeremy Bishop, Acting Director

Phone: 202/637-5085

Fax: 202/508-6923

E-mail: mames@aficio.org

Website: www.prideatwork.org

A constituency group of the AFL-CIO, its purpose is to mobilize support between the organized labor movement and the LGBT community.

Renaissance Transgender Association Inc.

Primary contact: Angela Gardner, Executive Director

Phone: 610/975-9119

E-mail: info@ren.org

Website: www.ren.org

Provides comprehensive education and support to transgender individuals and those close to them. Publishes a monthly magazine, Transgender Community News. Presents The International Congress on Crossdressing, Sex and Gender.

Transgender American Veterans Association

Primary contact: Monica Helms, President

E-mail: president@tavausa.org

Website: www.tavausa.org

Helps educate the Veterans Administration and the U.S. military on issues regarding fair and equal treatment of transgender and transsexual individuals. TAVA also advocates a change in public law and policy that will help initiate this fair and equal treatment.

Transgender At Work

Primary contact: Mary Ann Horton

E-mail: mah@mhorton.net

Website: www.tgender.net/taw/

Provides resources for employers interested in implementing workplace policies to help their transgender employees be most productive without spending energy hiding an important part of themselves.

Transgender Law and Policy Institute

E-mail: info@transgenderlaw.org

Website: www.transgenderlaw.org

Brings experts and advocates together to work on law and policy initiatives designed to advance transgender equality.

Transgender Law Center

E-mail: info@transgenderlawcenter.org

Website: www.transgenderlawcenter.org

Connects transgender people and their families to technically sound and culturally competent legal services, increases acceptance and enforcement of laws and policies that support California's transgender communities, and works to change laws and systems that fail to incorporate the needs and experiences of transgender people

TransHealth and Education Development Program

Primary contact: Jodi Sperber

TransHealth and Education Development Program/GLBT Health Access Project

Phone: 617/988-2605 x201

Fax: 617/457-8133

E-mail: jsperber@jri.org

Website: www.jri.org

A project of the Justice Resource Institute, TransHealth and Education Development Program educates health care and service providers to reach and care for transgender clients and patients, to reduce the risk of HIV/AIDS and to promote positive health care. TransHealth staff also consult with federal, state and city agencies such as the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Substance Abuse and Mental Health Service Administration, Health Resources and Services Administration, Massachusetts Department of Public Health and the Boston Public Health Commission.

APPENDIX 2.

POLICY RECOMMENDATIONS CHECKLIST

- >> **Amend Non-Discrimination or Equal Employment Opportunity Policies:** Declare in clear, unequivocal terms a policy prohibiting discrimination against transgender employees equal to other protected categories by including “gender identity or expression” along with “sexual orientation” among the list of protected categories in your primary, workplace-wide, non-discrimination or EEO policies.
- >> **Establish Written Guidelines Regarding Process and Roles That Clarify Responsibilities for Management and Staff:** Institute protocols that make it clear to transitioning employees, their supervisors and other staff who is responsible for issues that arise when an employee transitions.
- >> **Provide Information and Training:** Incorporate education about transgender issues in the workplace in diversity training programs.
- >> **Ensure Employee Privacy:** Treat an employee’s transgender status as private and confidential.
- >> **Change Personnel and Administrative Records:** Upon an employee’s request, change the employee’s name and sex in all personnel and administrative records, including internal and external e-mail and business cards.
- >> **Grant Restroom Access According to an Employee’s Full-time Gender Presentation:** Permit an employee to use restrooms that correspond to his/her full-time gender presentation, regardless of what stage that individual is in terms of his/her transition process.
- >> **Grant Locker Room Access According to an Employee’s Full-time Gender Presentation:** Unless there is unavoidable nudity, grant locker room access according to an employee’s full-time gender presentation regardless of what stage that individual is in terms of his or her transition process.
- >> **In the Case of a Dress Code, Make It Gender-Neutral and Apply Consistently:** If an employer has a dress code, it should create or modify it to avoid sexual stereotypes and then enforce it consistently.

- >> **Remove Health Insurance and Short-Term Disability Exclusions for Medically Necessary Treatments and Procedures:** Wherever possible, remove exclusions for medically necessary treatments and procedures, such as those defined by the Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders, from company-provided health care and short-term disability coverage.
- >> **Extend Wellness-Related Benefits to Transgender Employees:** Modify health- or disability-related leave policies to allow transgender employees to take leave associated with medically necessary treatments and procedures.
- >> **Treat a Transgender Employee's Spouse as You Do Other Employees' Spouses in the Provision of Employment Benefits.** One way to ensure that employees' partners are treated equitably is to extend domestic partner benefits to both opposite- and same-sex partners.

ENDNOTES

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Catherine Sheehy, research coordinator for WorkNet, helps monitor and evaluate corporate policies and practices toward GLBT employees, consumers and investors. In this capacity, she helps further develop and promote HRC's annual Corporate Equality Index, a simple and effective tool that rates corporate policies and practices on several key criteria that affect GLBT people. She contributed to a chapter covering marriage in the HRC Foundation's 2003 "The State of the Workplace for Lesbian, Gay, Bisexual and Transgender Americans" and constructed a tutorial on gay, lesbian, bisexual and transgender issues in the workplace available at www.hrc.org/tutorial. Before joining HRC, Sheehy worked for seven years at the Investor Responsibility Research Center where she managed a department that provides corporate responsibility research and investment screening tools to investors worldwide. Sheehy holds a bachelor's degree from the University of Notre Dame.

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HRC WORKNET

The Human Rights Campaign Foundation's workplace project, HRC WorkNet, is a national source of information on laws and policies surrounding sexual orientation and gender identity and expression in the workplace. HRC WorkNet advises employees and employers on the value of workplace diversity. It collects, analyzes and disseminates information to assist employees and employers in implementing policies and procedures aimed at treating gay, lesbian, bisexual and transgender workers equally. For more information, visit the HRC WorkNet website at www.hrc.org/worknet, or contact HRC WorkNet at 202/628-4160 or via e-mail at hrcworknet@hrc.org.

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