

Gender Identity and Expression in the Workplace

In 2012, the Ontario *Human Rights Code* (the “Code”) was amended to add “gender identity” and “gender expression” as prohibited grounds of discrimination. More recently, in 2014, the Ontario Human Rights Commission (the “OHRC”) published its own policy on the subject, defining these new grounds as follows:

- **Gender Identity** - each person’s internal and individual experience of gender. It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person’s gender identity may be the same as or different from their birth-assigned sex.
- **Gender Expression** - how a person publicly presents (external) their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person’s chosen name and pronoun are also common ways of expressing gender.

Under the *Code*, everyone has the right to define their own gender identity and to be recognized and treated as that gender without discrimination or harassment, whether or not they have undergone

surgery or have their identity documents up to date.

Employers who deliberately choose not to hire candidates because they are “trans people” are in direct violation of the *Code*. Discrimination can also be “indirect”, however, where an organizational rule may appear to be neutral on its face, but ultimately has the effect of excluding trans people.

Employers (and businesses generally) should be aware that:

- Trans people should have access to washrooms, change rooms and other gender specific services and facilities based on their lived gender identity
- Organizations must design or change their rules, practices and facilities to avoid negative effects on trans people and to be more inclusive for everyone
- Any exceptions must be legitimate in the circumstances, and trans people must be provided any needed accommodation unless it would cause undue hardship

The issue of gender identity and



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expression is one that has recently earned much publicity and is quickly becoming a greater and more frequent reality in the workplace. Proactive employers should be updating their workplace discrimination and harassment policies and training their management and staff on this emerging area of employment and human rights law.