



5.

**OTHER LEGAL
PROTECTIONS**

INTRODUCTION

Many of the legal protections that exist for transgender and non-binary individuals in Wisconsin derive from a patchwork of federal, state and local laws and regulations, as well as from interpretations of those laws by federal and state courts. The legal landscape for trans and non-binary people is changing rapidly and frequently, most often as a result of legislation at the state level and because of judicial opinions about the meanings of laws. While federal legislation served as an effective means of establishing and protecting the legal rights of marginalized communities in past decades, recent legal gains for trans and non-binary people are, at present, more likely to grow from public policy advocacy in the states and in our local communities, and continued judicial interpretation of existing laws.

Regardless of the source, trans and non-binary individuals in Wisconsin have protected legal rights that are pertinent to many aspects of our lives. If you believe that you have experienced discrimination or a denial of services because of your gender identity, you need to be able to make informed choices about your available options for addressing and resolving the situation. This section of the Guide is intended to offer both a basic overview of your rights as a trans or non-binary person in Wisconsin as well as options for resolving conflicts or violations of your rights.

Because laws that affect trans and non-binary individuals are in flux, consider familiarizing yourself with LGBTQ+ organizations or news services that share breaking legal developments so that you're up-to-date about your legal rights. (See the section "Online Resources" for a list of such organizations.)

Gender Identity Discrimination as Sex Discrimination

Since the vast majority of federal and state laws do not explicitly prohibit discrimination based on gender identity or status as transgender or non-binary, legal advocates have long argued to judges that they need to interpret bans on sex discrimination as encompassing gender identity discrimination. In recent years, many courts have accepted this invitation and have issued decisions plainly stating that, when a trans or non-binary person is treated differently because of their gender identity or gender expression, that different treatment is inherently discrimination based on sex. The reason is that by having a gender identity or gender expression that does not conform with traditional expectations for our sex assigned at birth, we are experiencing discrimination because of our non-conformance with society's traditional expectations for our "sex."

While a more straightforward approach would be for Congress and state legislatures to codify protections against gender identity discrimination, the current political climate in the U.S. makes wholesale revision of non-discrimination laws, especially at the federal level, unlikely. Until such policy changes are reflected in federal and state laws, judge-issued interpretations of gender identity discrimination as sex discrimination are the most effective

route available for trans and non-binary people to assert our right to be treated equally in various venues.

NON-DISCRIMINATION

Public Accommodations

Public accommodations non-discrimination laws protect people from unlawful discrimination in places that are open to the public-at-large, whether publicly- or privately-owned, such as retail stores, restaurants, bars, hotels, offices and parks.

Federal public accommodations non-discrimination laws do not apply explicitly to discrimination based on gender identity, sexual orientation or even sex. Wisconsin's public accommodations law prohibits discrimination based on sexual orientation and sex, but not gender identity. As a result, there is no federal or state law that broadly protects individuals from discrimination in public accommodations based on gender identity. The laws, however, have been interpreted in courts to provide some legal protections to transgender individuals. Discrimination against transgender and non-binary people can be considered sex discrimination.

You may submit a complaint to the Equal Rights Division of Wisconsin's Department of Workforce Development (see Additional Resources, below) if you experience harassment or discrimination or denial of services at a public accommodation, including being discriminated against or harassed or denied entry to a public restroom or other sex-segregated space.

Several Wisconsin cities and other municipal jurisdictions have enacted their own local non-discrimination protections. Some of these, including Milwaukee's and Madison's ordinances, prohibit discrimination based on gender identity in public accommodations. As a result, trans and non-binary people who believe their rights have been violated potentially have one or two routes to pursue for resolution: first, asserting that discrimination against a transgender person constitutes sex discrimination under Wisconsin's state law; and, second, asserting their rights under any local laws that apply to gender identity discrimination in public accommodations.

Hotel Check-In

Some trans and non-binary individuals find checking in to a hotel to be a venue where discrimination against and harassment of trans and non-binary individuals can play out. Because nearly all hotels require guests to provide a photo ID in order to check-in, mismatches between names or outdated photographs may “out” individuals as trans, create conditions for harassment, and/or interfere with your ability to check-in to the hotel.

Some hotel operators in Wisconsin recommend that trans individuals whose name or photo on their ID is a mismatch provide advance notice to the hotel of these circumstances. Consider calling the hotel directly in the days before your stay to alert them to any lack of agreement between your gender presentation and your ID. Hotel operators should be familiar with such circumstances and they should not give you a hard time about any outdated information on your ID, particularly when you have provided advance notice of any mismatch.

Housing

As is the case with public accommodations, no federal or state law explicitly provides broad protection from gender identity discrimination in housing. Federal laws do not offer protection for gender identity or sexual orientation, and Wisconsin’s law, while providing protection for sexual orientation, does not include gender identity.

Federal regulations, do, however, prohibit discrimination based on gender identity and sexual orientation in housing programs that are funded by the federal Department of Housing and Urban Development (HUD). This includes public and assisted housing, rental assistance (voucher) programs (like Section 8) that receive federal funds, homeless shelters, domestic violence shelters and other temporary housing as well as federally insured home mortgages. There is, however, no non-discrimination law that prohibits gender identity discrimination broadly in privately provided housing.

Wisconsin’s law prohibits sex discrimination. Because it does not explicitly apply to gender identity discrimination, a trans or non-binary

If you believe that you’ve experienced unlawful discrimination in HUD-funded housing, including a shelter, consider filing a complaint with the [HUD Office of Fair Housing and Equal Opportunity](#) (see Additional Resources, below).

If you believe you have experienced discrimination in housing that it is not HUD-funded, consider filing a complaint asserting discrimination based on your sex with the [Equal Rights Division of Wisconsin’s Department of Workforce Development](#) (see Additional Resources, below).

person who is discriminated against in housing will need to present their legal claim as one of sex discrimination.

Again, local ordinances in several Wisconsin cities and other municipalities provide an alternative to fill the gap in protection in federal and state laws. Many of the local ordinances in Wisconsin offering protection for gender identity apply to housing discrimination. And, while the remedies available may be more limited than what federal or state law could offer, the ordinances do provide a legal basis for obtaining an economic remedy or negotiating an informal resolution of a conflict or violation of rights.

Shelters

Trans and non-binary individuals who seek shelter housing, whether in shelters serving individuals who are underhoused or shelters serving individuals recovering from domestic violence, are protected from discrimination by HUD's "Equal Access Rule."

The Equal Access Rule ensures equal access to individuals in accordance with their gender identity in shelters funded by HUD. HUD housing programs are open to all eligible individuals and families regardless of gender identity (or sexual orientation). HUD's rule therefore requires that all recipients of funding, owners, operators and managers of shelters, as well as any other program funded by HUD) provide equal access to their facilities, benefits, accommodations and services.

If you believe that a HUD-funded shelter or program operator has violated the Equal Access Rule, you may file a complaint with the [HUD Office of Fair Housing and Equal Opportunity](#) (see Additional Resources, below).

What the Equal Access Rule means is that you are entitled to access to any HUD-funded shelter or program for which you are eligible, without regard to your gender identity. Shelters and programs governed by the rule must accept and place you in a shelter in accordance with your declared gender identity.

A shelter operator may not, for instance, refuse to place you in a sex-segregated shelter because you are trans or non-binary, make placement in sex-segregated facilities dependent on having medical or surgical interventions, or substitute their own perception of your gender identity for the information you have provided them.

Employment

Employment non-discrimination laws ensure that employees are not unfairly denied a job, fired from a job, paid less, denied hours, harassed, bullied, or otherwise mistreated at work because of their gender identity or expression or status as transgender or non-binary.

Importantly, employment non-discrimination laws protect our ability to access restrooms, changing rooms and other sex-segregated spaces that most closely align with our gender identity or gender expression. These laws also require employers to protect trans and non-binary employees from bullying, harassment or other mistreatment by both managers and coworkers.

Much like non-discrimination laws in public accommodations and housing, no federal or state law explicitly provides broad protection from workplace discrimination or harassment based on gender. Federal laws do not offer explicit protection for gender identity or sexual orientation, and Wisconsin's law, while providing protection for sexual orientation, does not include gender identity.

The federal law, Title VII of the Civil Rights Act of 1964, and Wisconsin's Fair Employment Act, however, both prohibit sex discrimination. Because they do not explicitly apply to gender identity discrimination, a trans or non-binary person who is discriminated against at work will need to present their legal claim as one of sex discrimination. Many federal courts in the U.S., along with the federal Equal Employment Opportunity Commission, have determined that Title VII applies to transgender (or non-binary) workers (and, to a lesser extent, LGB employees), and that when trans or non-binary workers are discriminated against, that discrimination constitutes sex discrimination.

Again, local ordinances in several Wisconsin cities and other municipalities provide an alternative or additional basis for seeking legal relief from discrimination at work. Many of the local ordinances in Wisconsin offering protection from gender identity discrimination apply to workplaces. And, while the remedies available may be more limited than what federal or state law could offer, the ordinances do offer a legal basis for obtaining an economic remedy or negotiating an informal resolution of a conflict or violation of rights.

Did You Know?

In 2019, the Equality Act passed the House of Representatives. The Equality Act would amend existing federal laws to add protection from discrimination based on gender identity and sexual orientation in many aspects of our lives, including employment, housing, credit, education, public spaces and services, federally funded programs and jury service.

Discrimination, Harassment & Retaliation: What They Are & What to Do About Them

Workplace Discrimination

Both federal law and Wisconsin law make it illegal for an employer to fire, refuse to hire or discriminate in any way against an employee based on the employee's gender identity or gender expression, or a number of other protected categories.

The law protects employees who are transgender or gender non-conforming as well as employees that are perceived or thought to be transgender or gender non-conforming.

Employers are prohibited from discriminating against you in **recruitment and hiring, work assignments, pay, leave or benefits, promotions, licensing or union membership, training, layoffs, firing, and other employment-related actions.**

To be considered illegal, the employment-related action must be shown to be because of your gender identity or gender expression (or another protected characteristic like race or age). The most straightforward way to substantiate that you are experiencing discrimination is to observe whether coworkers who are in similar positions with similar credentials and responsibilities are treated differently than you are. If non-transgender employees are not experiencing the same treatment, that may be a sign that illegal discrimination is occurring.

Workplace Harassment (and Sex Harassment)

Employees also may not be **harassed** in the workplace based on their gender identity or gender expression. Unlawful workplace harassment can include many different types of behaviors, and it can be perpetrated by owners, managers, supervisors, coworkers, subordinate employees or customers or clients. To be considered illegal, the harassing behavior you are experiencing must be shown to be happening because of your gender identity or gender expression (or another protected characteristic, like religion or physical ability).

Workplace harassment occurs when a supervisor, coworker or non-employee present in your workplace subjects you to behavior that is **hostile, offensive or intimidating** because of your gender identity or gender expression. To be illegal, harassment must be so **“severe or pervasive”** that it interferes with your ability to perform your job.

For example, **one** joke or slur by another employee about your gender identity or gender expression, or an inadvertent failure to address you with the correct pronoun, might be rude and feel unfair, but it is not **pervasive** or widespread enough to constitute illegal harassment. On the other hand, harassment is illegal **if you are subjected to such behavior on a regular basis, or if your employer intentionally or persistently fails to respect your gender identity or gender expression.** Likewise, if an employee physically harms you (or sexually assaults you) based on your gender identity, that behavior is illegal harassment because it is so severe, even if it happens **once.**

Behaviors that can contribute to workplace harassment include **failing to use your correct name and pronouns, failing to provide access to appropriate sex-segregated restrooms or other spaces, jokes, pranks, slurs, taunts, name-calling, offensive images or messages, shunning (ignoring you) or refusing to work with you, following you, excessively staring at you, or disrupting your locker or workspace, and more.**

Sex harassment can be a bit different than other types of workplace harassment. Sex harassment can occur in the same way that harassment based on gender identity or gender expression occurs. When someone at work engages in the types of behaviors discussed above because of an employee's sex assigned at birth, that conduct is sex harassment. For example, if a manager regularly makes jokes and comments at work that objectify males as sex objects, an employee may have a claim of being illegally harassed based on their sex (male).

Sex harassment also occurs when an owner, manager or supervisor conditions employment benefits or continued employment on sexual activity. In other words, it is illegal when a manager or supervisor requests or demands that an employee participate in sexual activity in order to keep their job or to receive a promotion, raise, better schedule, or perks like a gym membership. It is **never** acceptable for anyone at work to request, demand, suggest or imply that you must participate in sexual activity to keep your job, to receive employment-related benefits or advancement or to be physically safe.

Retaliation

Employers also may not retaliate against an employee who files a complaint of discrimination or harassment, assists someone in filing a complaint, or takes action to oppose discrimination or harassment. For example, if a coworker reports to human resources that their supervisor is harassing them based on their race, and you discuss the matter with human resources because you witnessed the supervisor's conduct, your employer may not take any negative employment-related actions against you because of that meeting (like firing you or cutting your pay), nor may your employer subject you to harassment.

What to Do if You Experience Workplace Discrimination, Harassment or Retaliation

1. Do Not Participate.

While it can be tempting, you do not want to participate in hostile, offensive or intimidating behavior of anyone at work, even if they are targeting you for harassment. If you engage in harassment of your harasser, there could be serious consequences for you at work, including losing your job. Additionally, harassment is only illegal if it is **unwanted**. Participating in harassment of your harasser can be misinterpreted by others as a sign that you were joking together or that you **welcomed** the behavior.

2. Tell Them to Stop.

Although it can be challenging to confront someone who is treating you unfairly or bullying or harassing you, try to resolve the problem, if you are able, by telling your supervisor or coworker to stop their discriminatory or harassing conduct. You will have to decide whether you think that person will be open to hearing your request and whether your request will be effective.

NOTE: If you are experiencing harassment, the law requires that you make it clear that the behavior is unwanted. You can do this by talking with the person harassing you in person, over the phone or through an email or IM. Consider what method you are most comfortable using to communicate your message and what method will best ensure your sense of security and safety.

3. Write it Down.

Even if this is the only action that you take, it is a very important one. You may think that you will remember everything that has happened to you, but our memories do fade. Keep a separate notebook at home that you don't use for any other purpose (because it could become public if you take legal action later).

When you experience an instance of discriminatory or harassing behavior, make a note at home at the end of the day. Include as much information as you can, like the date, approximate time, names of individuals involved, names of witnesses, what happened, and who said what. Keep the notebook at home – you may not want others to see it.

4. Make a Report.

If you are unable to communicate with the person who is discriminating against or harassing you, or if you have tried to resolve the problem and it isn't working, it may be time to report the behavior to your supervisor or human resources. If your supervisor is the perpetrator, you may report instead to your supervisor's supervisor or to human resources.

Check your employee handbook or find out what's in your employer's policy against discrimination and harassment. That policy will instruct you how to make a report and to whom you should report. The policy should also explain the employer's complaint-handling and investigation procedures.

Your employer is obligated to investigate a report of discrimination or harassment or retaliation. Similarly, if you report to a supervisor or manager, they are obligated to inform their supervisor or human resources. An investigation should be conducted as soon as possible and with as much confidentiality as possible. Ask your supervisor or human resources about how they will protect your confidentiality during the investigation process. They will likely need to inform the person you are complaining about, in order to give that person an opportunity to address your claims. Witnesses will likely also be told about your complaint, for the same reasons. No other employees should be informed of your complaint or the investigation.

At the end of the investigation, your employer should inform you about any determination and any actions that they will take to stop the discrimination or harassment. Don't expect your employer to share information with you about discipline or other consequences for your harasser – the person harassing you also has a right to confidentiality about their employment relationship.

5. Seek Outside Help.

If you have reported the illegal conduct to your employer and it continues, or if you are unable to make a report at work for any reason, consider seeking assistance outside your workplace. There are many sources of support for you.

Advocates at transgender or LGBTQ+ organizations may be able to help you understand your rights and/or provide advice. They may also provide referrals to trans-knowledgeable attorneys.

There may also be free or low-cost legal services available locally, depending on your income. A great way to find out about local legal services or to find a local attorney is to check with the bar association of the county where you live. For example, the Dane County Bar Association (Madison) maintains lists of free and reduced-fee legal services and of lawyers in the county.

You may also seek assistance from a private attorney. Be prepared to pay a consultation fee and to discuss your ability to pay for services. Many employment lawyers work on a contingency-fee basis, which means that, instead of charging you up front, the lawyer will essentially work for free, and will only get paid if you receive money. See “Legal Services Referrals” in this section for additional sources of referrals in Wisconsin.

6. File a Complaint.

Both federal and state law require you to file a complaint of discrimination, harassment or retaliation with a federal or state agency before you may file a lawsuit. You must file that complaint with one of the agencies within 300 days of the discrimination or harassment occurring.

In Wisconsin, you may file your complaint either with the federal **Equal Employment Opportunity Commission** or the **Equal Rights Division of Wisconsin’s Department of Workforce Development**. These agencies provide information and forms for filing a complaint on their websites. See “Additional Resources” at the end of this section for websites.

NOTE: Although rare, **physical and sexual assault** can occur in the workplace. Physical and sexual assault are crimes. If you have been physically or sexually assaulted at work, or if you have experienced any other crime at work, you may report that conduct to law enforcement as well as your employer.

TRANS AT WORK

Social Security Numbers & Gender Marker Mis-Matches

For trans and non-binary individuals in the workplace, concerns often arise about the Social Security Administration’s (SSA) records, which include both our name and gender marker,

potentially revealing information to an employer about our gender that we might prefer not to disclose. Changes made by SSA over the past several years have eliminated much of the reason for that concern, as SSA itself is no longer alerting employers to mis-matches between the gender marker in the employer's records and the gender marker in SSA's records. **However, it still remains a possibility that some employers will be alerted to a gender marker mis-match when verifying your Social Security number.**

The Social Security cards that are issued to individuals include only two pieces of information: our name and Social Security number (SSN). The SSA, however, maintains additional information about us in its records, including our gender marker, which is originally obtained from the sex assigned on our birth certificate.

When an individual provides a SSN to a new employer, that employer in turn verifies the personally identifying information with SSA, to ensure that individuals do not use someone else's SSN to obtain employment. In the past, when SSA detected a mis-match in our personally identifying information, including our gender marker, SSA would send what is referred to as a "no-match" letter to our employer, informing them of a discrepancy between the employer's data and the SSA's records. These "no-match" letters were intended to prompt to the employer to re-check the employee's personally identifying information and correct any erroneous information if necessary.

In the past, these "no-match" letters could have the obvious effecting of "outing" individuals as trans to their employers. Thankfully, in 2011, the SSA stopped sending "gender no-match" letters to employers. This means that **SSA itself no longer alerts employers** when the gender marker provided by the employee is different from the gender marker in SSA's records.

For most people, SSA's elimination in 2011 of "gender no-match letters" means that a new employer should not be alerted to gender marker discrepancies in your SSA record.

However, the gender marker information in SSA's records is **still used for employment verification by some third-party services** that offer SSA verification to employers – particularly state government agencies.

The largest SSA verification system used by private employers eliminated gender in 2011. However, some systems used by state government agencies still alert to a gender marker discrepancy. When there is a mis-match in the gender marker data, SSA may report this back to the state agency. **It therefore remains possible that SSA will reveal a gender marker mis-match to a state agency employer.**

You should know that, if this happens, your employer is under no obligation to take any action, as long as the rest of your personally identifying information matches SSA's records. If you are applying for a job with a state government agency, you may need to consider in advance how to approach the potential mis-match alert from a verification system.

Some trans and non-binary people will disclose information about their gender identity, gender marker or name changes during the interview process, discussing and presenting their experiences as having helped them develop transferable skills and experience that will contribute to their success as a potential employee. Others present their status or experiences as trans or non-binary as opportunities to discuss diversity in the workplace, employer commitments and goals.

You can also investigate whether you would be able to change the gender marker on your SSA records before you apply for a job. See the section below, “Updating Federal Documents: Social Security Card” for more information.

If you do not wish to disclose information about your gender identity, consider submitting a separate, confidential letter to the human resources department after your hire, in which you can inform them about your gender identity or potential SSA mis-matches in your personally identifying information. Managers and supervisors are often involved in screening and making hiring decisions, but they’re rarely responsible for aspects of hiring like Social Security number verification or background checks. Ask the human resources department to maintain that information in confidence, and particularly not to share it with your new supervisors or managers.

Background Checks

Similar to employer verification of our Social Security number, employer background checks can be a source of anxiety for trans or non-binary job applicants who do not wish to disclose information about their gender identity or trans or non-binary status to their employers. Background checks, of varying degree, are becoming an increasingly common part of the employment application process.

As a result, trans and non-binary job applicants will sometimes need to make difficult decisions about the name and gender marker they provide potential employers.

“Have you ever been known by any other name?” This simple-seeming question can pose a potential barrier or be a source of anxiety for many of us. Background checks can reveal past name changes or that an individual is using a name other than their legal name.

This question places many trans and non-binary people in a bind – revealing on a job application that you have changed your name may reveal information about your gender identity, opening the door for possible discrimination. **Choosing not to answer the question can alternately leave you vulnerable to a later allegation of having provided false information, or at minimum, having withheld pertinent information from your job application, which can lead to withdrawal of a job offer or termination of employment.**

Many trans and non-binary people like to use a chosen name on job applications and resumes. Doing so is perfectly acceptable, and it may provide a confidence boost. But, it does mean that you'll need to be prepared to deal with a possible question about naming down the road.

Remember that it is illegal under both federal and state law for an employer to fail to hire you because of your gender identity, gender expression, status as trans or non-binary or your history of identifying as trans or non-binary.

Although a Social Security verification process or employer background check may reveal information that you would rather not disclose, that information may not serve as a basis for refusing to hire you, withdrawing a job offer or terminating your employment.

Some trans and non-binary people deal with this challenge head-on, disclosing their trans or non-binary status during interviews and presenting their experiences as having helped them develop transferable skills and experience that will contribute to their success as a potential employee. Others present their status or experiences as trans or non-

binary as opportunities to discuss diversity in the workplace, employer commitments and goals.

For those who do not wish to center their trans or non-binary status as part of a job application process, consider submitting a separate, confidential letter to the human resources department at employers where you are seeking work, before they conduct a background check as part of your application process. In that letter, you can inform them about your gender identity or potential mis-matches in your personally identifying information. Managers and supervisors may screen applicants and making hiring decisions, but they're rarely responsible for aspects of hiring like Social Security number verification or background checks. Ask the human resources department to maintain that information in confidence, and particularly not to share it with hiring managers.

Privacy: Disclosing Gender Identity or Medical Information

All employees have a right of privacy for certain information in the workplace. Transgender and non-binary employees are no exception. If you disclose information about your gender identity or gender expression, medical information, information about your status as transgender or non-binary or information about your history of identifying as transgender or non-binary, your employer is obligated to maintain all of that information in confidence.

Your employer may only disclose medical and other confidential information to people at work who have a "need to know." These people may include human resources personnel and supervisors or managers. Rarely should your employer disclose such information to your coworkers, subordinate employees or non-employees in your workplace.

Any medical information that you disclose to your employer and any medical documentation that you provide should be maintained in a secured file separate from your personnel file. If your employer has a self-funded insurance plan, all information about your health insurance and all information related to your medical care should also be maintained in a secured file separate from your personnel file. Personnel information and medical information should never be comingled.

Check your employee handbook or ask your employer what practices it will use to ensure that your confidential information remains that way.

Dress Codes & Grooming Standards

Many employers, particularly in workplaces that serve the public, maintain policies requiring employees to wear a uniform or to dress in a particular manner (e.g., khaki or navy blue bottoms or white tops). Sometimes those requirements differ by gender. It is legally acceptable for your employer both to have a dress code and to have different requirements for employees based on gender.

For example, a restaurant may require that all servers wear black bottoms and white tops. They may also require that male-identified employees wear a black necktie (and they may prohibit female-identified employees from wearing a necktie). That difference in the dress code is acceptable legally.

Employees must, however, **be allowed to follow the gender-based dress code that most closely aligns with their gender identity or gender expression**, as long as they completely comply with the requirements for that gender. For example, a transmasculine employee in the example above should be allowed to follow the dress code for male-identified employees and wear a necktie. He should never be forced or required to comply with the dress code for female-identified employees. A non-binary employee in the example above should be allowed to determine which dress code they will follow. Again, they can select the appropriate gender-based dress code, but they must comply with its requirements completely.

NOTE: Longstanding laws prohibit employers from requiring female-identified employees to wear dresses or skirts at work. It is **never** acceptable for an employer to require you to wear dresses or skirts, whatever your gender identity or expression may be. Everyone has the right to wear pants at work.

Employers may also have rules related to employees' appearance at work, called "grooming standards." Grooming standards are requirements about appearance-related items like hair length or style, facial hair, cosmetics, jewelry and more. Again, it is acceptable both for employers to have grooming standards and for those grooming standards to be different based on gender. Employers may require that all employees keep their hair cut to a certain length for safety reasons, or that no employees wear jewelry on their hands or fingers.

Courts have decided that some differences in grooming standards based on gender are acceptable, as long as the burden on the employees is similar, regardless of gender. For example, an upscale cocktail lounge may require that employees wear dressy, clean, and pressed clothing, have clean, trimmed fingernails and style their hair everyday, because the cocktail lounge wishes to present a particular image to its customers.

It may be acceptable for that employer also to include gender-based differences in its standards, like requiring female-identified servers to wear facial make-up and prohibiting male-identified servers from having facial hair, as long as the employer has legitimate business reasons for the differences and as long as the differences do not create greater burdens for employees categorized in one gender.

As with dress codes, you have the right to follow the grooming standards that most closely align with your gender identity or gender expression.

Transitioning on the Job

Coming out as trans or non-binary or transitioning at work can feel overwhelming no matter what may be involved – preparing for medical or surgical interventions, socially transitioning with names and pronouns, or modifying your gender expression, clothes or appearance.

Many Americans spend the majority of our waking hours in a workplace – some that are welcoming, inclusive and supportive, and some that feel less so. We may have relationships with coworkers or friends whose responses to our coming out or transitioning are important to us. Some of us may work in relative isolation, having little social or “extra” connection to other employees to support us at work. We may have very reasonable fears about encountering discrimination or putting our livelihoods in jeopardy.

As you consider coming out or transiting at work, this Guide recommends spending some time in advance considering the information you want to share, with whom, in what order, and what you need from your employer in order to be authentic and successful at work.

Do you want coworkers to know about your gender identity or transition plans? How would you like that information to be shared – will you be involved in speaking with employees, or would you prefer human resources personnel or your supervisor to do so? Will you invite coworkers to discuss your gender identity or plans with you, or to ask questions, or do you prefer not to engage in those conversations? Do you want to be addressed with a different name or pronouns? Do you need a new name tag or uniform? Do you want to change the restroom that you’re using?

Whatever your needs or your communication preferences, the process of coming out or transitioning at work is **YOURS**. You are in charge of the information, you decide to share it and with whom, and only you can decide what changes, if any, you need at work. Like many aspects of our lives as trans and non-binary individuals, **there is no one way** to tell your employer or coworkers that you are transgender or non-binary. This process is a personal one and how you choose to do it is entirely up to you.

Following are some tips you may wish to consider in preparing for coming out or transitioning at work. At the end of this section are additional resources – including resources that you may share with your employer – about managing transitioning in the workplace.

NOTE: Remember that both federal and state law prohibit your employer from discriminating against you because of your gender identity, gender expression status as transgender or non-binary or your history of identifying as transgender or non-binary.

Non-discrimination laws also **require your employer to take reasonable steps to protect you from harassment by coworkers because of your gender identity or gender expression, and to take reasonable steps to put a stop to any harassment** of which your employer is aware.

Coming Out

Remember, you always make the decision about when you are comfortable and ready to come out. As you prepare to come out, ask yourself:

- Are you comfortable with your own understanding of your gender or identity? Are you ready to share information about your gender or identity with your supervisor, manager, human resources representative or coworkers? Some of them? All of them?
- What do you need at work to feel safe, comfortable and productive?

When you are ready share information at work, consider developing a timeline for when you will tell others, who you will speak with, in what order and what you will share:

- What feels important for the people you work with to know about you? What is **not** important for them to know about you?
- Can you identify one or a few allies at work – individuals with whom you can share first and ask to support you at work?
- When do you want to start telling people? If you are changing your appearance, starting hormone therapies or having surgery, will you tell others before or after?
- Who will you tell first? This can be a coworker, supervisor or manager or human resources representative.
- How will you tell them? In person? In writing?

When you are ready to inform your employer formally, ask to meet with your supervisor or a human resources representative. Having thought about your needs, communicate the information directly:

- Do you know what support or changes you need at work? Do you wish to be involved in communicating information to other employees, or would you like human resources to handle that? Make a list, write it down and bring it with you to the meeting.
- Do you wish to be addressed with a different name or pronouns? Do you need a different uniform, nametag or other materials reflecting the correct name?
- Do you interact with customers or clients? How will you or your employer handle sharing information with them?

Disclosing Transition Plans

Whether you intend to transition medically, or whether you are transitioning socially or changing your gender expression, consider these items as you prepare to disclose transition plans at work:

You can help educate your employer. Ideally, your employer, or at least its human resources department, will have some knowledge and comfort about working with and supporting trans or non-binary employees. Often times, employers want to do the right things, but simply don't know what they are.

Check out the resources at the end of this section, where we have included resources for employers that you can share to help them better understand gender identity and how to support trans or non-binary employees.

Will you need time off work for transition-related reasons? Develop a timeline for your transition process, whatever it may be. If you are transitioning medically, how much time do you need? If you are not transitioning medically, do you still want to take some time away while changing your gender expression or appearance? Do you have an idea when you'll do this?

Ask to meet with your supervisor or human resources representative. Ask another employee whom you trust to come to the meeting as a support person. Inform your supervisor or human resources **both** about your plans **and** what you need for support.

What will you say to your employer to communicate what you need to feel safe, comfortable and productive at work? What does an inclusive environment feel like to you? Do you want to be addressed differently or use a different restroom or access different sex-segregated spaces? Will you need time off? How much? All at once, or at different times?

Work with your employer to develop a plan. Will there be an announcement? One-on-one meetings with close coworkers and supervisors or managers? When? Will you be involved? Do you want to answer questions or share additional information one-on-one, in groups or not at all? Who should receive this information? All employees? Your group? How will information be communicated to customers or clients? Or do you not want to share with customers or clients? Are there other changes or support you need? Like restroom access? Will you be altering your gender expression, appearance or clothing? If so, do you need different uniform or corrected nametag or other modified materials?

Build a support system at work, starting with close coworkers and others you identify as allies. Share resources to increase their knowledge of issues that are relevant to you. They can support you, advocate for changes in the working environment and push back against any coworker bias, as they likely will feel less at risk for experiencing discrimination.

Additional Resources

Human Rights Campaign, Transgender Inclusion in the Workplace: A Toolkit for Employers
https://assets2.hrc.org/files/assets/resources/Transgender_Inclusion_in_the_Workplace_A_Toolkit_for_Employers_Version_10_14_2016.pdf?_ga=2.198642221.346664497.1548978152-561857472.1548353479

Guidance for employers supporting transitioning employees.

Society for Human Resources Management (SHRM), Managing Gender Transition in the Workplace (resource for members only)

<https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/managinggendertransitionintheworkplace.aspx>

Guidance for employers supporting transitioning employees.

Out & Equal Workplace Advocates

<http://outandequal.org/app/uploads/2016/09/Transition-Guidelines-Full-Edition.pdf>

Workplace Gender Identity and Transition Guidelines. Out & Equal publishes this excellent and comprehensive guide to support both trans/non-binary employees and employers during an employee's transition.

Transgender Law Center

<https://transgenderlawcenter.org/resources/employment>

Resources for trans/non-binary employees, employers and coworkers, including: Know Your Rights; Model Employment Policy (for Employers); Tips for Working With Transgender Coworkers; much more.

LEGAL SERVICES REFERRALS

FORGE

<https://forge-forward.org/about/contact-us/>

Contact FORGE to speak with an advocate about workplace rights and to obtain attorney referrals. Phone: (414) 559-2123; Email: askFORGE@forge-forward.org.

Dane County Bar Association

<https://www.dcba.net/resources>

Directories of legal clinics, legal services and legal assistance programs in Madison and Wisconsin; online directory of member attorneys.

Equal Rights Division, Wisconsin Department of Workplace Development, Attorney Referral List

https://dwd.wisconsin.gov/er/civil_rights/discrimination/attorney_referral_list.htm

Referral list of attorneys in Wisconsin who represent “Complainants” (employees). NOTE: “Respondents” refers to employers.

Milwaukee Bar Association Lawyer Referral & Information Service

<https://findmilwaukeeattorneys.org/>

Attorney referrals in Milwaukee; pro bono/free legal services directory.

Wisconsin Bar Association, Lawyer Search

<https://www.wisbar.org/forpublic/inneedalawyer/pages/reduced-fee-services.aspx>

Directories of free and discounted services, including Modest Means Referral Service (referrals to reduced-fee services for individuals not eligible for free services); Lawyer Hotline (providing free answers to simple legal questions); Wisconsin Free Legal Answers; and online directory of licensed attorneys in Wisconsin.

Wisconsin LGBT Bar Association Directory

<http://www.lgbtbarwis.org/directoryfind-a-lawyer/>

Directory of LGBTQ+ and allied attorneys.

LOCAL LAWS

Several cities and counties in Wisconsin have enacted municipal laws that prohibit discrimination based on gender identity. These local laws vary in their scope. Generally they apply to employment and housing settings, but a few of them additionally prohibit discrimination based on gender identity in places of public accommodation, which are places that are open to the public-at-large. These laws should protect our right to access sex-segregated restroom facilities that best align with our gender. For more information, see the section “Restroom Access.”

Familiarize yourself with the local laws where you live. If you experience discrimination or harassment at work or in housing, and, in some cases, in places of public accommodation

like restrooms, you may be able to submit a complaint to a local agency that is responsible for enforcing the municipal law.

The remedies provided by such local laws may be limited. For example, Milwaukee’s ordinance places a cap of \$5,000 on the amount of money that can be recovered from someone who violates the law. Regardless, in a state like Wisconsin that offers no explicit protection from discrimination based on gender identity, the local ordinance offers some remedy, and, perhaps more importantly, it provides trans and non-binary people with a legal basis for negotiating informal resolution of incidents of discriminatory conduct.

Localities That Prohibit Gender Identity Discrimination in Wisconsin

Appleton
Cudahy
Dane County (Madison)
De Pere
Janesville
Madison
Milwaukee
Milwaukee County

EDUCATIONAL SETTINGS

Title IX is the federal civil rights law that applies to all schools, including colleges and universities – public or private – that receive funds from the federal government, which means nearly all schools must comply with the law. Title IX dictates that students be treated equally based on sex. While the law does not explicitly prohibit discrimination against students based on their gender identity, courts across the country have declared that gender identity discrimination is unlawful sex discrimination under the law.

The legal landscape for trans and non-binary students’ protections from discrimination has been in flux in recent years, and it likely will continue to evolve as the presidential administration considers its position on legal protections for students. Regardless of the opinion of the presidential administration or the agencies it oversees, Title IX has been interpreted by courts to protect transgender students from discrimination in schools, including by the federal Seventh Circuit Court of Appeals, whose decisions are binding in Wisconsin. The presidential administration’s actions have no effect on Title IX or how it is applied by courts.

These court-issued determinations mean that transgender and non-binary students must be treated equally with their non-transgender peers.

Trans and Non-Binary Student Rights

- **You have the right to be treated according to your gender identity.** That’s true even if you haven’t done things like changing your ID or getting medical treatment; your school cannot require you to show proof of these things in order to have your gender respected.

- **You have the right to be called by the name and pronouns that match your gender identity.** Sometimes people make an honest mistake, but teachers and school staff aren't allowed to call you by the wrong name or pronouns on purpose after you tell them how you want to be called.
- **You have the right not to be bullied or harassed because you are transgender or gender non-conforming.** If school administrators know that you're being bullied or harassed, they have to take action to end it.
- **You have the right to use restrooms and locker rooms that match your gender identity, and you can't be forced to use separate facilities.** If you feel safer or more comfortable using a private space, or if you'd like to use a separate space for a short period of time, you can request that—but your school can't force you or pressure you into using a separate restroom or locker room if you don't want to.
- **You have the right to get the same opportunities to learn and participate in school life as anyone else, no matter your gender, including your gender identity or expression, or your race, nationality, or disability.** This includes not being punished because you are transgender or gender non-conforming and being allowed to participate in school activities and events.
- **You have the right to dress and present yourself according to your gender identity.** This includes how you dress at school every day as well as for dances, graduation, and other school events. You need to follow general dress code rules that apply to all students, but your school has to let you follow those rules in a way that matches your gender identity.
- **You have the right to protect your privacy and choose who you tell or don't tell about being transgender.** If you want to keep that information private, your school must make sure that things like your transgender status, your former name, or your medical history are kept as confidential as possible.
- **You have the right to join or start an LGBT student club like a GSA or Pride Alliance.** Your school isn't allowed to ban LGBT student groups or treat those groups differently than other student groups.

(NCTE. Know Your Rights: Schools. Retrieved on January 28, 2019, from <https://transequality.org/know-your-rights/schools.>)

Restroom Access

Trans and non-binary students must be provided with access to sex-segregated restrooms and other sex-segregated spaces in schools that most closely align with their gender identity. Forcing a student to use a restroom based on the sex they were assigned at birth is not appropriate and it is unlawful. Similarly, a school may make a

single-user restroom facility available for use by transgender or non-binary students, but the school may never restrict trans or non-binary students to using only the single-user facility.

Student-Athletes

Wisconsin high school athletes who participate in sanctioned interscholastic athletic programs are subject to regulation by the Wisconsin Interscholastic Athletic Association (WIAA). The WIAA has devised a policy to determine the eligibility of trans and non-binary student-athletes for participation in sex-segregated athletic programs. (See “Additional Resources” at the end of this section for website.)

The WIAA’s eligibility determinations are dependent exclusively on the nature of medical or surgical interventions (if any) the student-athlete has undertaken. For most teens, medical interventions may consist of puberty blockers (used to suppress hormones and delay development of secondary sex characteristics) and hormone therapies to obtain secondary features more closely aligned with their gender identity or gender expression.

WIAA Transgender Participation Policy

- i. An FTM student who has started hormone therapy (example: testosterone) is only eligible for male teams. Hormone supplementation is allowable in this situation consistent with WIAA policy. Note that a FTM student who has NOT started hormone therapy may participate on female teams if desired by the student, as there would be no concern about safety or competitive equity without biological interventions having been implemented.
- ii. An MTF student must have one calendar year of medically documented testosterone suppression therapy to be eligible to participate on a female team, consistent with WIAA policy. Note that a MTF student who has NOT started testosterone suppression therapy may participate on male teams if desired by the student, as there would be no concern about safety or competitive equity without biological interventions having been implemented.
- iii. The allowances for transgender students who have not yet started hormone therapy apply even if the students are dressing in accordance with the opposite gender or using names/pronouns of the opposite gender.

(WIAA (WI Interscholastic Athletic Association). Transgender Participation Policy. Retrieved on January 28, 2019, from <https://www.wiaawi.org/Portals/0/PDF/Eligibility/WIAAtransgenderpolicy.pdf>.)

Student Privacy

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects personal information found in students' school records. Generally speaking, schools are prohibited from sharing information found in school records with anyone, absent permission from the student (or their parents or legal guardians if they are a minor).

FERPA applies to information in school records about trans or non-binary students related to their gender identity, medical history and status as transgender. Students who wish to present in a manner aligned with their gender identity who do not wish to disclose information about their gender identity broadly or to other students should consider a discussion with school administrators about their obligations under FERPA and the steps the school will take to protect the privacy and confidentiality of information about a student's gender identity.

What Some School Districts in Wisconsin are Doing

Over half of Wisconsin's school districts have enacted policies to increase inclusion of trans and non-binary students in their schools. Both Madison's and Milwaukee's public school districts have implemented particularly thorough policies that offer students and their parents or guardians tools to consider what choices the student would like to make about how teachers, staff and other students interact with them, which sex-segregated facilities they will use or what changes they may wish to make to the district's records and transcripts to more closely align with their gender identity.

If you, or a student you know, attends Madison or Milwaukee public schools, review the policies and documentation provided by the districts to determine what modifications you'd like to make to your school experience to enhance your comfort, safety and ability to learn (see "Additional Resources" at the end of this section for websites). Even if you don't attend Madison or Milwaukee public schools, consider reviewing the policies as a guide for working with your own school administrators to meet your needs or to change policies.

If you, or a student you know, has experienced harassment, discrimination or denial of access to a restroom, locker room or other sex-segregated space at school, you may take legal action against your school in court.

You may wish to file a complaint about discrimination under Title IX with the federal Department of Education. However, please remember that the Department of Education presently takes the position that Title IX does not apply to transgender students, and, as a result, may not investigate your complaint.

ADDITIONAL RESOURCES

ACLU of Wisconsin (American Civil Liberties Union)

aclu-wi.org

Public policy analysis, lobbying and advocacy; legal representation.

HUD Office of Fair Housing and Equal Opportunity

https://www.hud.gov/program_offices/fair_housing_equal_opp

HUD, Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs

<https://www.federalregister.gov/documents/2016/09/21/2016-22589/equal-access-in-accordance-with-an-individuals-gender-identity-in-community-planning-and-development>

Department of Housing and Urban Development's rule requiring equal access in shelters and other HUD-funded housing.

Equal Employment Opportunity Commission

https://www.eeoc.gov/federal/fed_employees/filing_complaint.cfm

Information about workplace discrimination and complaint-filing procedures.

Equal Employment Opportunity Commission

https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm

Information about federal non-discrimination protections based on gender identity.

Equal Rights Division – Civil Rights Bureau, Wisconsin Department of Workforce Development

https://dwd.wisconsin.gov/er/civil_rights/

Information and complaint-filing procedures about discrimination in public accommodations, housing and employment in Wisconsin.

Human Rights Campaign, Trans Toolkit for Employers

<https://www.hrc.org/campaigns/trans-toolkit>

Resources for employers.

Madison Department of Civil Rights

<https://www.cityofmadison.com/civil-rights/find-help>

Information and resources about Madison's non-discrimination ordinance and complaint filing.

Madison Metropolitan School District Guidance & Policies to Support Transgender, Non-Binary, and Gender-Expansive Students

<https://studentservices.madison.k12.wi.us/guidance-policies-support-transgender-non-binary-and-gender-expansive-students>

Inclusive policies and practices to support gender-expansive students; educational resources to build knowledge and inclusive language; guidelines to support students,

including confidentiality, name and gender marker changes, and access to restroom/changing spaces.

Metropolitan Milwaukee Fair Housing Council

<http://www.fairhousingwisconsin.com/programs.html>

Information, resources and assistance with enforcement of housing rights, including systemic investigations of institutional discrimination.

Milwaukee Equal Rights Commission

<https://city.milwaukee.gov/ERC#.XPLR04hKhaQ>

Promotes equality and enforces City's non-discrimination ordinance in housing, employment and public accommodations.

Milwaukee Public Schools Gender Inclusion Guidance

<https://esb.milwaukee.k12.wi.us/attachments/f36536ea-e075-4a98-b135-54abb5ee05c1.pdf>

Practices for ensuring equitable treatment of gender non-conforming students and staff; guidelines for name, pronoun, other preferences and support needs, restroom/locker room access and name and gender marker changes.

National Center for Lesbian Rights

nclrights.org

Legal information, resources and advocacy for issues affecting LGBTQ+ individuals, specifically including transgender and non-binary people.

National Center for Transgender Equality, Know Your Rights: Employment

<https://transequality.org/know-your-rights/employment-general>

Information and resources about employment rights.

National Center for Transgender Equality, Know Your Rights: Housing and Homeless Shelters

<https://transequality.org/know-your-rights/housing-and-homeless-shelters>.

Information and resources about gender identity discrimination in housing and shelters.

National Center for Transgender Equality, Know Your Rights: Schools

<https://transequality.org/know-your-rights/schools>

Information and resources about student rights.

Transgender Law Center, Employment Resources

<https://transgenderlawcenter.org/resources/employment>

Information and resources for employees and employers, including model policies and guidance for coworkers.

Transgender Legal Defense & Education Fund

transgenderlegal.org

Legal information and resources for transgender and non-binary people, including pro bono name change project.

WIAA (WI Interscholastic Athletic Association) Transgender Participation Policy

<https://www.wiaawi.org/Portals/0/PDF/Eligibility/WIAAtransgenderpolicy.pdf>

Eligibility requirements for transgender and non-binary student-athletes in Wisconsin high schools.

Wisconsin LGBT Bar Association

lgbtbarwis.org

Association of gay, lesbian, bisexual and transgender legal professionals and allies.

Resources include directory of LGBTQ+ and allied attorneys; know-your-rights materials; educational events.