



The Commonwealth of Massachusetts Commission on Lesbian, Gay, Bisexual, Transgender, Queer & Questioning Youth



Michel Anteby
Chair

Sasha Goodfriend
Alexander Armand Nally
Vice Chairs

Corey Prachniak-Rincón
Director

November 29, 2017

Guidance for Massachusetts State Agencies: Workplace Practices to Recognize Gender Identity Diversity

The Massachusetts Commission on LGBTQ Youth was established by the General Court to “enhance and improve the ability of state agencies to provide services to gay and lesbian youth,”¹ which has since been amended to include youth who identify as bisexual, transgender, queer, and/or questioning.² Under this authority, the Commission is issuing the following guidance to state agencies to integrate workplace practices that establish respect to people of all gender identities.

Legal basis

The Constitution of the Commonwealth of Massachusetts establishes that “[g]overnment is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men.”³

In this spirit, Executive Order No. 526 was issued in 2011, ordering that “[n]on-discrimination, diversity, and equal opportunity shall be the policy of the Executive Branch of the Commonwealth of Massachusetts in all aspect of state employment, programs, services, activities, and decisions.”⁴ Specifically, the order instructs all state agencies to “develop and implement affirmative action and diversity plans to identify and eliminate discriminatory barriers in the workplace; remedy the effects of past discriminatory practices; identify, recruit, hire, develop, promote, and retain employees who are members of under-represented groups; and ensure diversity and equal opportunity in all facets, terms, and conditions of state government.”⁵ The order also states that “[a]ll programs, activities, and services provided, performed, licensed,

¹ Massachusetts G. L. c. 3, § 67. Available at <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter3/Section67>

² See *id.*, as amended by House Bill 4001 of 2013. Available at http://www.mass.gov/bb/gaa/fy2015/os_15/h5.htm

³ Constitution of the Commonwealth of Massachusetts, art. VII. Available at <https://malegislature.gov/Laws/Constitution>

⁴ Executive Order No. 526, § 2, 2011. Available at <http://www.mass.gov/courts/docs/lib/eo500-599/eo526.pdf>

⁵ *Id.* § 3.

chartered, funded, regulated, or contracted by the state shall be conducted without unlawful discrimination based on... sexual orientation, gender identity or expression.”⁶

All government agencies in the Commonwealth are thus prohibited from discriminating against employees or prospective employees on the basis of their gender identity. As transgender people are a group that has and continues to face widespread discrimination in the Commonwealth, agencies must also take proactive steps to provide equal opportunity for members of this population. The need for this action is demonstrated by the disparities and stigma that this community faces; for example, one survey found that 22% of transgender people in Massachusetts had been fired, denied a promotion, or denied a job in the past year alone on the basis of their gender identity, and 23% had recently experienced mistreatment at work.⁷ Additionally, one in three transgender people in Massachusetts reported psychological distress in the past month alone;⁸ this can mean lessened productivity for transgender employees of state agencies, and greater need for (but more difficulty in accessing) services for transgender clients of agencies. Finally, people of color, who represent a significant amount of the LGBTQ population in the Commonwealth,⁹ face compounded disparities that likely have an even higher negative impact on their experiences as both employees and clients of state agencies.¹⁰

Executive Order No. 526 not only requires programs and services provided directly by state agencies to be free of unlawful discrimination, but also states that the same be true for any programs or services for which agencies contract or fund. Many public and private entities are already prohibited by law from discriminating on the basis of gender identity in fields such as employment, education, lending, leasing, and public accommodations,¹¹ but this executive order places an affirmative responsibility on agencies to ensure that such discrimination does not occur within any entity with which it is connected.

Therefore, the Commission on LGBTQ Youth is advising agencies that compliance with this directive and the Constitution of the Commonwealth merits that certain minimum steps be taken to recognizing and supporting gender identity diversity in the workplace. In so doing, agencies will better achieve compliance with regulations directed to them as employers, build a culture in

⁶ *Id.* § 4.

⁷ National Center for Transgender Equality, 2015 U.S. Transgender Survey: Massachusetts State Report, at 1 (2017). Available at <http://www.transequality.org/sites/default/files/docs/usts/USTSMAStateReport%281017%29.pdf>

⁸ *Id.* at 3.

⁹ See Massachusetts Commission on LGBTQ Youth, Sexual Orientation and Gender Identity Among Massachusetts High School Students: Results of the 2015 Youth Risk Behavior Study (2016) (establishing that youth of color were more likely to identify as LGBTQ than were their white peers). Available at <http://tinyurl.com/myrbs15>

¹⁰ See generally National Center for Transgender Equality, 2015 U.S. Transgender Survey: Report on the Experiences of Black Respondents (2017). Available at <http://www.transequality.org/sites/default/files/docs/usts/USTSBlackRespondentsReport-Nov17.pdf>; National Center for Transgender Equality, 2015 U.S. Transgender Survey: Report on the Experiences of Latino/a Respondent (2017). Available at <http://www.transequality.org/sites/default/files/docs/usts/USTSLatinReport-Nov17.pdf>

¹¹ See Acts of 2011 c. 199, §§ 2-8. Available at <https://malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter199>; see also Massachusetts G. L. c. 272, § 98. Available at <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter272/Section98>

which their clients have more equitable access to services, and ensure that the entities with which they enter contracts are respectful of diverse gender identities.

Understanding gender identity and expression

Gender identity is defined by Chapter 199 of the Acts of 2011 as “a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.”¹²

While everyone has a gender identity, people who identify as transgender – i.e., those whose gender identity does not match the sex with which they were assigned at birth – face widespread discrimination and resulting health and socioeconomic disparities. Also facing disparities are people who identify as gender-nonconforming, meaning those who do not identify with traditional male and female gender labels, and instead hold another identity, such as gender non-binary or genderqueer.

Gender expression, while not explicitly defined in state law, is also a protected class under Executive Order No. 526. This term refers to the way in which a person presents their sense of gender to the world. Some people intentionally project a gender expression that does not entirely conform with social expectations of “male” or “female,” or may sometimes present to the public as a gender with which they do not identify, such as a male-identified individual who chooses to express himself in a manner that is traditionally understood to be feminine.

References to another person's gender often occur automatically in everyday conversation, but can become problematic for transgender or gender-nonconforming individuals. One may sometimes refer to another person as a “man” or “woman,” so knowing how a person wants to be identified is important. Even more commonly, gender (and gender stereotyping) arises in interpersonal relations when one uses or declines to use pronouns to refer to another individual.¹³ Historically, most people have been referred to in English by the pronouns “he,” “him,” and “his” for those who identify as men, and “she,” “her,” and “hers” for those who identify as women. Transgender individuals often prefer to be referred to by these same pronouns, in correspondence with their gender identity; for example, most transgender women want to be referred to as “she” and most transgender men want to be referred to as “he.” Additionally, some transgender individuals and others who do not conform to male or female gender identities may want to be referred to by other pronouns, most commonly “they,” “them,” and “theirs,” or simply by their name as much as possible in place of pronouns.¹⁴

Providing someone with the opportunity to self-identify their pronouns can give them a sense of being respected and accepted, and avoids the stigma and distress that results when they are called by the wrong pronouns. It also ensures that the people with whom they interact feel informed and

¹² Acts of 2011 c. 199, § 1. Available at <https://malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter199>

¹³ See Banaji & Hardin, “Automatic Stereotyping,” 7 Psychological Science 3, 136–41 (1996).

¹⁴ See A.I. Lev, *Transgender Emergence: Therapeutic Guidelines for Working with Gender-variant People and Their Families* (2nd ed. 2013).

confident that they are referring to that individual in a respectful way, thus avoiding making errors that can make interactions uncomfortable.

Recommended actions

While there are many specific actions that agencies can take to reduce gender identity-based disparities, as detailed in the Commission's annual recommendations,¹⁵ the Commission also recommends the following three broad actions to make agencies more inclusive of all gender identities.

First, agencies should instruct employees to include their preferred gender pronouns in email signatures, in formal letters, and on business cards. This practice should apply to everyone, regardless of their gender identity. For example, if a person prefers to be referred to as "she" (regardless if she is transgender or not), her email signature might read:

Jasmine Rodriguez
Epidemiologist
Department of Public Health
Pronouns: She / Her / Hers
Phone: XXX-XXX-XXXX
Email: XXXXXXXXXXXX

Second, agencies should instruct employees to begin the practice of including gender pronouns in introductions to clients, coworkers, and others with whom they meet. For example, someone who uses male pronouns could say at the start of a meeting, "I'm Jackson, I use he / him / his pronouns, and I will be your case manager;" an example from a gender-nonconforming individual might be, "My name is Kay, I am the departmental supervisor, and I use they / them / theirs pronouns."

Third, agencies can share this information with private for-profit entities and non-governmental organizations with which they contract, provide grants, etc., and encourage those entities to also adopt these practices. A vast body of research suggests that government agencies can play a critical and beneficial role in diffusing non-discriminatory workplace practices to other sectors of the economy,¹⁶ and this should be the goal of all agencies in the Commonwealth.

Impact of recommended actions

As noted above, transgender and gender-nonconforming people in Massachusetts face widespread discrimination in the workplace, as well as experience many disparities in relation to their health and well-being. These recommendations can help reduce discriminatory treatment and stigma, thus improving the process of seeking services for all residents of the Commonwealth.

¹⁵ See generally Massachusetts Commission on LGBTQ Youth, FY18 Annual Policy Recommendations (2017). Available at <https://www.mass.gov/files/documents/2017/09/21/FY18%20Recommendations%20-%20LGBTQ%20Youth%20Commission.pdf>

¹⁶ See, e.g., The New Institutionalism in Organizational Analysis (P.J. DiMaggio & W.W. Powell eds. 1991).

Most directly, the practices recommended herein will benefit transgender and gender-nonconforming employees of the agencies implementing these practices. These employees will be able to share their preferred pronouns with others in a way that does not ostracize or isolate them, but rather is done in solidarity and with buy-in from their coworkers. These employees may feel more welcome, safe, and supported in their environment by having a proactive way to share how they would like to be referred, rather than having to frequently correct colleagues or navigate the workplace while being referred to by pronouns with which they do not identify.

These recommendations will also benefit all employees, as those who are not transgender or gender-nonconforming will learn more about gender identity diversity and the best practices for treating gender minorities with respect. In the same way that developing stronger awareness of gender pronouns has been shown to increase students' empathy towards others, the adoption of these recommendations can be expected to increase employees' empathy towards non-binary and transgender co-workers and clients.¹⁷ This will help to build a more culturally-competent, knowledgeable, and respectful workplace environment where all employees will benefit.

Agency management will also benefit by taking proactive steps towards fulfilling the requirements of Executive Order No. 526. By actively seeking to create an inclusive workplace, managers can avoid potential scenarios in which employees feel that they have been treated poorly or not given a fair chance to advance in the agency. By supporting employees of all gender identities, managers will have a more productive and satisfied team, and will also be able to recruit the best and most diverse talent.

Finally, these recommendations will benefit clients of the agencies that implement them. Transgender and gender-nonconforming clients will see that the agency is culturally competent, welcoming, and supportive of people of all gender identities. This population – which faces significant discrimination in accessing services, and experiences compounded health and socioeconomic disparities as a result – will feel more confident gaining access to what they need and are entitled to under the law. For other clients who are not transgender or gender-nonconforming, they will benefit from the improved climate of the offices from which they seek services, and will benefit by gaining exposure to gender identity diversity. Clients and others with whom the agency interacts will also have the benefit of being able to correctly and respectfully refer to all employees of the agency and avoid the discomfort of making errors.

Conclusion

In furtherance of its mission, the Commission hereby offers this guidance for agencies to make their workplaces more inclusive of diverse gender identities. The Commission is able to offer technical assistance and support for any agency seeking to implement this guidance. Questions and requests for technical assistance may be directed to the Commission's Director, Corey Prachniak-Rincón, at corey.prachniak-rincon@state.ma.us.

¹⁷ See, e.g., MacNamara & Durlak, "Experiencing Misgendered Pronouns: A Classroom Activity to Encourage Empathy," 3 Teaching Sociology 45, 269-78 (2017).