



Transgender, Non-Binary, and Gender Non-Conforming Employees

Classification No.: 1000.31B

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I. PURPOSE

This order revises the U.S. Environmental Protection Agency's procedures for providing equal opportunity for all employees and applicants for employment, including transgender, non-binary, and gender non-conforming employees to maintain a workplace that is free of discrimination. This order is not intended to replace or impede any applicable discrimination complaint processes and does not alter the filing deadlines for invoking those processes.

II. DEFINITIONS

- (a) *Employee*: Individuals who are currently employed by the EPA, individuals previously employed by the agency, and individuals who have submitted applications for employment with the agency.
- (b) *Gender*: A way to describe one's identity relative to the categories of masculinity and femininity, often understood within social and cultural contexts.
- (c) *Gender Identity*: An individual's internal sense of self in relation to gender. Gender identity is not necessarily visible to others and may or may not match the individual's sex assigned at birth.
- (d) *Gender Expression*: The way an individual expresses their gender identity, which may or may not conform to social stereotypes associated with a particular gender.
- (e) *Cisgender*: A term for people whose gender identity matches the sex they were assigned at birth.
- (f) *Transgender*: A term for people whose gender identity is different from the sex they were assigned at birth.
- (g) *Gender Non-binary*: Also called *non-binary*. An umbrella term for gender identities that exist outside of the male-female/man-woman gender binary. Although the term *transgender* includes non-binary identities, not all individuals who identify as non-binary also identify as transgender.

Non-binary gender identities may include, but are not limited to, non-binary, genderqueer, genderfluid, gender-expansive, agender, Two-Spirit, hijra, and third gender.

(h) *Gender Non-conforming*: A broad term referring to people who do not identify with one of the traditional expectations of gender, or whose gender expression does not fit into an existing gender category.

(i) *Transition/Transitioning*: The process some transgender, non-binary, and gender non-conforming people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. Also known as *gender affirmation*.

(j) *Gender Marker*: An official designation on government documents that categorizes an individual as male (M), female (F), or a gender categorization that is neither male nor female (X).

III. COVERAGE

This order applies to all agency employees. Although volunteers, contractors, and grantees are not federal employees, the agency does not permit discrimination by or against anyone in the EPA workplace. To the extent possible and permitted by law, the principles articulated in this order will apply to volunteers, contractors, grantees, and guests who perform agency-related functions in the EPA workplace and request assistance in accordance with this order. This will be achieved by the agency working with the transgender, non-binary, or gender non-conforming individual to facilitate aspects of the order under the agency's control for non-employees.

IV. AUTHORITY AND REFERENCES

(a) Title VII of the *Civil Rights Act* of 1964, 42 U.S.C. § 2000e, et seq.

(b) *Privacy Act of 1974*

(c) *Civil Service Reform Act of 1978*, as amended

(d) Title 5, United States Code § 552

(e) *Bostock v. Clayton County*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020)

(f) Executive Order 11478, as amended, *Equal Employment Opportunity in the Federal Government*

(g) Executive Order 13583, *Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce*

(h) Executive Order 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*

- (i) Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce*
- (j) U.S. Office of Personnel Management, *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace*
- (k) OPM, *Guide to Processing Personnel Actions*, Chapter 20, “Name Change”
- (l) OPM, *The Guide to Personnel Recordkeeping*, Chapter 4, “How to Reconstruct a Personnel Folder: How to Reconstruct a Personnel Folder due to a Change in Gender Identity”
- (m) Homeland Security Presidential Directive 12, *Policy for a Common Identification Standard for Federal Employees and Contractors*
- (n) Federal Information Processing Standard 201-2, *Personal Identity Verification (PIV) of Federal Employees and Contractors*
- (o) EPA Order 4711, *Procedure for Addressing Allegations of Workplace Harassment*
- (p) *Automation of Name Change Requests* (May 10, 2021)

VI. ROLES AND RESPONSIBILITIES

(a) Office of Mission Support (OMS)

(1) Will provide guidance and assistance to supervisors, managers, and employees on matters related to employment, human resources, and facilities regarding the employment of transgender, non-binary, and gender non-conforming individuals.

(i) Office of Human Resources (OHR)

(A) Will be responsible for the agency’s policy (in collaboration with appropriate stakeholders) on the employment of transgender, non-binary, and gender non-conforming individuals.

(B) Will assign a point of contact to serve on the Assistance Team to address human resources matters and policy, and to provide assistance on the implementation of an employee’s transition plan.

(ii) Facilities Management and Services Division

(A) Will provide assistance on matters related to access and availability of sanitary and related facilities.

(B) Will assign a point of contact to serve on the Assistance Team for matters regarding sanitary and related facilities.

(iii) Human Resources Shared Service Centers

(A) Will advise transgender, non-binary, and gender non-conforming employees on the required procedures, documentation and forms necessary to change employee records.

(B) Will process personnel actions as necessary for transgender, non-binary, and gender non-conforming employees.

(C) Will ensure that employees in transition are allowed to continue their benefits and participate in all benefit programs.

(D) Will assign points of contact to serve on the Assistance Team for matters related to personnel actions, benefits and other operational matters.

(iv) Assistance Team

(A) Will provide assistance to transgender, non-binary, and gender non-conforming employees.

(B) Will serve as the central point of contact for the employee, supervisor, Regional Human Resources Officers (RHROs) and Program Management Officers (PMOs) for human resources matters regarding transitioning (e.g., employment, facilities, employee records, benefits). The Assistance Team may serve as the initial point of contact for the transitioning employee.

(b) Office of Civil Rights (OCR)

(1) Will provide guidance to transgender, non-binary, and gender non-conforming employees and applicants for employment on civil rights matters (discrimination, harassment and EEO) affecting transgender, non-binary, and gender non-conforming employees, in accordance with 29 C.F.R. Part 1614.

(c) Regional Human Resources Officers and Program Management Officers (RHRO/PMOs)

(1) Upon request, will work with the transitioning employee, supervisor and/or the appropriate Assistance Team contacts to develop a transition plan addressing the activities and logistics involved in the employee's transition process.

(2) The RHRO/PMO may serve as the initial point of contact for a transitioning employee.

(d) Supervisors and Managers

- (1) Will adhere to the agency's policy on transgender, non-binary, and gender non-conforming employees.
- (2) Will take appropriate action to prevent discrimination and address any type of harassment which they knew or should have known.
- (3) Upon request by a transitioning employee, the supervisor will work with the employee, RHRO/PMO and/or the appropriate Assistance Team contacts to develop a transition plan addressing the activities and logistics involved in the employee's transition process.

(e) National OHR Training Manager, Training Officers and Training Coordinators

- (1) As necessary, will work with program offices and regions to arrange training or educational workshops to foster understanding about transgender, non-binary, and gender non-conforming individuals.

(f) Employees

- (1) Will adhere to this policy on transgender, non-binary, and gender non-conforming employees.

(g) Transgender, Non-Binary, and Gender Non-Conforming Individuals

- (1) Should work with the appropriate agency contacts (i.e., supervisor, RHRO/PMO, Assistance Team, and/or OCR) for matters regarding transitioning, employment, facilities, records, harassment, or discrimination.

VI. POLICY

As stated in Section II, transitioning is the process some transgender, non-binary, and gender non-conforming people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include social, legal, and/or medical changes. Common examples include changing one's name or pronouns, updating legal documents and other records, such as publication records, taking hormones, and/or undergoing surgeries. This policy applies regardless of whether an individual transitions or not.

(a) The assistant administrator of OMS will appoint an Assistance Team to be the central point of contact for human resources and facilities matters relating to transgender, non-binary, and gender non-conforming individuals.

(b) OCR is the central point of contact for civil rights matters (discrimination, harassment and EEO) affecting transgender, non-binary, and gender non-conforming employees. In the event an employee believes they have been discriminated against or harassed based on their gender

identity, the employee may exercise their right to file a complaint of sex discrimination under the EEO complaint process with OCR. In addition, if an employee believes they have been subjected to harassment, they should immediately contact their supervisor, manager, or appropriate Assistance Team contact.

(c) Gender identity and expression are inherently personal matters. The agency recognizes that each transgender, non-binary, and gender non-conforming employee is different and has unique needs, which all employees, managers, and supervisors should respect.

(d) A transitioning employee may request a “transition plan” in accordance with this order. The transition plan is not mandatory but is available as a best practice. A transitioning employee requesting a transition plan will work with their supervisor to develop the plan. They may also reach out to the RHRO/PMO or the Assistance Team for help with developing the plan. The transition plan should address necessary procedures, accountability, communication, training, timeframes, and other logistics as necessary. The transition plan should be in writing. The transition plan should not contain sensitive issues the transitioning employee does not wish to address or matters that do not impact the workplace. Transitioning employees may seek changes to their transition plan at any time. Please see section VII, Procedures, for more details.

(e) Discrimination and Harassment

(1) All agency employees are expected to conduct themselves in a manner consistent with their obligation to maintain a work environment free from discrimination including any type of harassment – either sexual or nonsexual – of any employee or applicant for employment, including discrimination based on gender identity, expression, or perceived non-conformity.

(2) Any employee, manager or applicant for employment, or former employee who believes they have been subjected to discrimination by EPA has a right to file a complaint. If the employee elects to seek redress, to be timely, the employee must file the complaint within 45 calendar days of the alleged discriminatory event by contacting OCR or an EEO officer at the regional or office level.

(f) Confidentiality and Privacy

(1) An employee’s transition should be treated with as much sensitivity and confidentiality as any other employee’s significant life experiences, such as hospitalization. Medical information received about an employee is protected under the *Privacy Act* and may only be released in accordance with routine uses or with the employee’s consent.

(2) Supervisors should advise employees not to spread information concerning transgender, non-binary, and gender non-conforming employees.

(3) Personal information about the employee should be considered confidential and should not be released without the employee’s prior agreement. This includes the

employee's status as transgender, non-binary, or gender non-conforming.

(4) Program or regional offices should consider whether to have a trained presenter meet with employees to provide cultural competency training and answer general questions regarding gender identity.

(5) Issues that may arise should be discussed as soon as possible while maintaining confidentiality between the employee and the supervisor.

(g) Names and Pronouns: Managers, supervisors, and employees should use the name and pronouns the employee requests. Such requests can be made verbally or in writing, such as via email or in an email signature block. Continued intentional use of an incorrect name and pronouns, or references to an incorrect gender, may constitute harassment.

(h) Sanitary and Related Facilities:

(1) The Department of Labor's Occupational Safety and Health Administration guidelines require agencies to make access to adequate sanitary facilities as free as possible for all employees in order to avoid serious health consequences.

(2) An employee should be permitted to use the facilities that correspond with their gender identity. An employee may not be asked to provide medical or legal documentation of their gender identity to access gender-appropriate facilities. In addition, no employee should be required to use a segregated facility apart from other employees because of their gender identity or transgender status.

(3) The agency cannot require an employee to use facilities that are located an unreasonable distance from the employee's work station.

(i) Employee Records: A transgender, non-binary, or gender non-conforming employee may request, subject to the conditions of *The Guide to Personnel Recordkeeping*, Chapter 4, that records in the employee's official personnel folder and other employee records (pay accounts, training records, benefits documents, etc.) be updated to reflect a change of name or gender. EPA will ensure the records are changed consistent with the *Privacy Act*. Instructions for how to reconstruct an employee's OPF to account for a change in name or gender are set forth in *The Guide to Personnel Recordkeeping*, Chapter 4.

(j) Hiring Process: Hiring managers and supervisors should be sensitive to the possibility that an applicant may have transitioned. The name and gender on the application may correspond with the person's current usage; however, background or suitability checks may disclose a previous name that indicates a gender different from what appears on the application. In such cases, hiring managers and supervisors should respectfully confirm with the applicant the name and gender that should be used throughout the hiring process.

(k) Sick and Medical Leave: An employee receiving treatment as part of their transition may use sick leave under applicable regulations. An employee who is qualified under the Family Medical Leave Act may also be entitled to take medical leave for transition-related needs of their family.

(l) Insurance Benefits: Employees in transition who already have federal insurance benefits must be allowed to continue their participation, and new employees must be allowed to elect participation based on their updated names and genders.

VII. PROCEDURES

(a) Transition Plan

(1) An employee who chooses to request a transition plan should notify their supervisor that they intend to undergo a gender transition. If the employee prefers not to go to their supervisor first, they may reach out to their RHRO/PMO and/or the appropriate Assistance Team contact. Employees intending to transition with or without a transition plan should ideally provide advance notice, when possible, to the agency so that preparations for the necessary logistics (i.e., badging, name change, and records changes) can begin promptly. Please note that issuance of a Personal Identity Verification card, such as the EPASS badge, is governed by Homeland Security Presidential Directive 12 and its implementing standard. New EPASS badges will be issued when the federal requirements for a name change are met.

(2) The supervisor should work with the employee (and an optional advocate or other support person of the employee's choice, as appropriate) to develop a transition plan for the organization. Alternately, the employee and supervisor may work with the RHRO/PMO and/or the appropriate Assistance Team contact to develop the plan.

(3) The plan should include all organizational components with which the employee interacts on a regular basis.

(4) The transition plan should discuss expectations, education and training for co-workers and management, legal and personnel requirements, a communication plan, and other logistics as necessary.

(i) It is appropriate to adapt the transition plan to fit an individual or a specific location. Not all of the steps may be necessary. The steps which are included in the transition plan should be determined on a case-by-case basis.

(ii) Ideally, developing the transition plan should be a collaborative process between the employee and supervisor with possible assistance from the RHRO/PMO and/or appropriate Assistance Team contact. Please consult the appropriate Assistance Team contact if there is a question about the provisions of the proposed transition plan.

(5) The communication component of the transition plan should be as basic as possible, yet sufficiently comprehensive to address the needs of the transitioning employee, management and co-workers. It should not address sensitive issues that the transitioning employee is uncomfortable addressing or issues which do not impact the workplace (e.g., it is not a workplace concern as to whether the transitioning employee has had or will have any medical procedures). The scope of the plan should be determined by the transitioning employee's preferences, but suggested considerations include:

(i) The communication plan should be prepared with the intent of providing accurate, useful information and promoting inclusion for all employees.

(ii) Topics such as the name and pronouns the employee uses, expectations for workplace conduct for fellow coworkers, and any other topic that the transitioning employee is comfortable with sharing to help ensure adequate understanding and awareness among the employee's co-workers.

(6) Additional information can be found in Appendix A, *Suggestions for a Transition Plan*.

(b) Preferred Name Change and Legal Name Change

A preferred name change is used to change the employee's official agency email and name listed in the agency's directory. A preferred name change does not require a personnel action. A legal name change requires your electronic Official Personnel Folder to be updated and a personnel action is required. An employee can initiate a preferred name change at any time. A legal name change requires legal documentation and must be completed in accordance with *The Guide to Personnel Recordkeeping*, Chapter 4.

Procedures for requesting a preferred name change or legal name change in EPA electronic systems are outlined in the following guidance documents:

(i) *User's Guide for Name Change Requests Using the eIDW Identity Self Service Portal*

(ii) *Quick Reference Guide: Name Change Processing for Employees*

(iii) *Quick Reference Guide: Name Change Processing for Contractors*

VIII. RECORDS

(a) Please see EPA's policies on Record Schedules for detailed retention instructions regarding the following:

(1) EPA Records Schedule 553: Official Personnel Folders (OPF) – Civilian

IX. MATERIALS SUPERSEDED

EPA Order 1000.31B, Transgender and Gender Non-Conforming Employees, dated June 14, 2016 (administrative update April 2, 2020)

X. APPENDICES

Appendix A: *Suggestions for a Transition Plan*

SUGGESTIONS FOR A TRANSITION PLAN

The transition process is unique to each individual. Here are some suggestions based on best practices.

Advance Preparation

- A. The employee may choose to meet privately and informally with their immediate supervisor, an advocate or other support person, RHRO/PMO or Assistance Team points of contact to obtain information about processes and discuss concerns.
- B. When the employee is ready to move forward, they will meet with their immediate supervisor and share their intent to transition. The employee may identify an advocate or other support person to attend all transition planning meetings with them and to provide support throughout the process. Alternately, the employee and their supervisor may hold this initial meeting with the Assistance Team contacts to share the employee's intent to transition.
- C. Additional meetings with the employee's management chain may be necessary to inform and involve them appropriately in the announcement of the transition.
- D. The employee and supervisor should identify relevant stakeholders to be potentially included in the steps below, such as the employee's coworkers and employee affinity groups.
- E. The transition plan should discuss general expectations of all stakeholders.

Communication Plan

- A. Outline what and how information should be shared with each stakeholder group by developing a communication plan. This part of the plan should be as basic as possible, yet sufficiently comprehensive to address the needs of management, the transitioning employee and co-workers.
- B. The communication plan should be prepared with the intent of providing accurate, useful information and promoting respect and inclusion for all employees.
- C. The communication plan should not address issues that the transitioning employee is uncomfortable addressing or issues which do not impact the workplace (e.g., it is not a workplace concern as to whether the transitioning employee will be undergoing surgery).

Additional Considerations

- A. The date or dates when others will need to take specific actions, such as using different names and pronouns. These dates should be driven by the employee transitioning.

B. Whether, how and when the employee's workgroup, clients and/or vendors will be informed of the employee's transition. Some employees may prefer that this occur at a workgroup meeting, while others may prefer written announcements or conversations with individuals or smaller groups. Should an employee choose to inform others of their transition through smaller conversations or in writing, a workgroup meeting may still be held to discuss policy and procedures, and answer any questions.

C. Outline the arrangements for any name changes to be effective on the date requested by the employee, so that nameplates, etc., will be available as applicable and when needed. Please note, the issuance of a Personal Identity Verification card, such as the EPASS badge, is governed by Homeland Security Presidential Directive 12 and its implementing standard. A new EPASS badge will be issued when the federal requirements for a name change are met.

D. Determine who will inform others of the employee's transition. Supervisors should be prepared to perform this task if asked.

E. Decide how much information will be shared at any meetings with employees and the supervisor.

F. Decide if, before any announcements are made, the employee wants to talk to some of their co-workers to disclose their plans on a one-on-one basis.

G. Determine whether the staff will need training or an educational workshop on the subject matter.

H. Determine what changes will be made to records and systems, and when.

I. Outline and confirm the expected plan for use of gender-specific facilities, such as restrooms.

J. Identify any leave requested by the employee, if known.

K. Identify resources available to support the transition and those affected by the transition.

L. Consider how long certain human resources functions take (e.g., preferred or legal name changes in human resource systems).

Workgroup Meeting

As part of their transition plan, employees may coordinate with their supervisor to hold a workgroup meeting or include their announcement in an already scheduled meeting. If an employee chooses to disclose through smaller conversations or in writing, a meeting may still be held to answer questions and explain procedures. Everyone with whom the employee interacts on a regular basis should be included in the workgroup. A handout is optional in conjunction with the meeting. The employee may choose whether to be personally present at this meeting.

The supervisor, in conjunction with the highest-level manager in the group, should:

- Make it clear that the transitioning employee is valued and has management's full support.
- Reference this order and its recommendations.
- Communicate the dates on which specific actions, such as using a different name or pronoun for the transitioning employee, should occur.
- Lead by example. Use the employee's chosen name and pronouns in all official and unofficial communication.
- Religious Objections or Other Concerns. Employers have the responsibility to set an expectation of fair treatment for all employees. Protections are not about changing people's beliefs, but rather preventing inappropriate workplace behavior and allowing all employees to do their jobs.
- Make it clear that during the process of transitioning, staff are expected to behave in a professional manner so as to maintain the transitioning employee's dignity and emphasize that work will continue as before.
- Answer people's questions, as appropriate.
- If training or an educational workshop is part of the transition plan, announce it at this meeting. It should ideally be offered before the employee transitions.

Additional Steps

By the dates requested by the employee, the employee's supervisor should ensure the following steps are taken, if necessary, just as they would for a new or transferred employee):

- Place a new nameplate on the employee's door/desk/cubicle/workstation, as appropriate.
- Update the employee's name and other information in any organization charts, mailing lists, email directory and other references, as appropriate.
- The supervisor should plan to be present and available on any key dates, such as the day when the employee chooses to start using a different name and pronouns. The supervisor should make introductions if needed, support the employee, and ensure the work environment is respectful.