

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
CHIEF, INTELLIGENCE COMMUNITY EQUAL EMPLOYMENT OPPORTUNITY AND DIVERSITY
WASHINGTON, DC 20511

MEMORANDUM FOR: Intelligence Community Equal Employment Opportunity and
Diversity Council Principals
Intelligence Community Chief Human Capital Officers

SUBJECT: Key Elements to Include in Policies Covering Employment of
Transgender Individuals in the Intelligence Community

Memorandum Purpose and Overview:

The Federal government is committed to maintaining a workplace that is free from discrimination, in accordance with the law, Executive Orders, and policy. This memorandum may be used as a guide to Intelligence Community (IC) elements, as they review their existing non-discrimination policies, to ensure such policies guarantee a non-discriminatory working environment for all individuals, irrespective of gender identity and expression. This memorandum provides specific guidance relating to transgender individuals in the IC workplace, including applicants for IC employment (hereafter “individual(s)”). This guidance aligns with IC Directive (ICD) 110, the IC policy to promote equal employment opportunity, identify and eliminate discriminatory practices, and promote diversity to enhance the intelligence mission.¹

The information that follows is intended as an IC resource, to further promote a workplace atmosphere of fairness, equity, and inclusion, consistent with ICD 110 and the *Principles of Professional Ethics for the Intelligence Community*.

IC Policy Guidance

The Office of Intelligence Community Equal Employment Opportunity and Diversity provides the following guidance to assist IC elements when drafting policies related to non-discrimination against individuals based on gender identity and expression. This guidance was coordinated with IC elements, and prepared in consultation with Lesbian, Gay, Bisexual and Transgender (LGBT) Employee Resource Groups and leaders including IC Pride and other Federal agencies that have adopted policies concerning transgender individuals. This guidance applies regardless of an individual’s explicit self-identification as transgender, and addresses key elements that should be included in transgender workplace policies: transition; confidentiality and privacy; dress and appearance; individual autonomy; names and pronouns; hiring process; co-worker’s personal views; recordkeeping; sanitary and health facilities; security clearance process; insurance benefits; sick and medical leave; training and assistance; and workplace assignments and duties.

¹ ICD 110 states “the IC shall provide equal employment opportunity in employment for all persons, ensure non-discrimination and protection from reprisal in employment matters, and promote the full realization of equal employment opportunity and diversity . . . across the IC.”

SUBJECT: Key Elements to Include in Policies Covering Employment of Transgender Individuals in the Intelligence Community

Transition: As used throughout this guidance, the term “transition” refers primarily to an individual’s social transition, as this is the point at which an individual usually will bring these issues to the attention of the individual’s employer. Managers and supervisors should be aware that not all transgender individuals will follow the same path, and that decisions about which steps are necessary for an individual’s transition are highly personal, made by the individual in consultation with the appropriate health care professionals. Whatever form an individual’s transition takes, all individuals should be treated with dignity and respect. Moreover, the medical aspects of an individual’s transition may be less apparent, and in most cases are less important from a personnel management perspective, than an individual’s social transition at the workplace. “Transition” is defined in the definition section.

Confidentiality and Privacy: An individual’s gender transition and transgender status should be treated with as much sensitivity and confidentiality as any other private or highly personal life experience. Transgender individuals often want privacy regarding their transition or transgender status. They may be concerned about safety and employment issues if other people or employers become aware of their transition. Moreover, medical information received about transgender individuals may be protected under the Privacy Act (5 U.S.C. § 552a) or other laws protecting patient privacy, and regardless should be handled with utmost sensitivity.

Employing agency managers and supervisors should be sensitive to these specific concerns and advise employees to respect the privacy and dignity of transgender individuals. An employee should be provided information about a co-worker’s transition only if employee has a need to know related to the performance of the employee’s duties, and any Agency records must be handled in accordance with the Privacy Act. Absent these circumstances, personal information about the transgender individual should not be released to anyone, unless the individual consents to having the information disclosed. It should be noted, however, that questions concerning gender identity as it relates to medical, physical, and sexual matters may be inappropriate. If it would be helpful, employing agencies may have a trainer or presenter meet with employees to answer general questions regarding gender identity. Concerns that arise should be discussed confidentially as soon as possible between the employee and the employee’s manager(s) and supervisor(s).

Dress and Appearance: Agencies should evaluate, and consider eliminating, where appropriate, gender-specific dress and appearance rules. Dress codes should not be used to prevent a transgender employee from dressing in a manner consistent with the employee’s gender identity, nor should a dress code be used to prevent an employee from maintaining a gender-neutral appearance.

Individual Autonomy: Gender transition is a highly personal process, which varies widely from person to person. IC elements should allow transitioning employees to control the transition process, from determining how to notify colleagues of the employee’s transition to when the employee begins working in the gender that reflects the employee’s gender identity. For example, some employees may wish to speak with colleagues themselves, while others may ask an EEOC official to inform coworkers. An employee driven transition process is a standing best practice in

SUBJECT: Key Elements to Include in Policies Covering Employment of Transgender Individuals in the Intelligence Community

the IC and has resulted in successful outcomes for both the transitioning employee and the organization. The employee's autonomy and engagement with this process is paramount.

Names and Pronouns: For everyday interactions and usage, managers, supervisors, and coworkers should use the names and pronouns employees use for themselves, as expressed by the employees. Further, managers, supervisors, and coworkers should use the desired names and pronouns in communications. The names and pronouns to be used in the workplace are established by individuals and no additional documentation (such as legal name change or medical information) is required. Repeated, intentional refusal to use an individual's chosen name and pronoun, and/or repeated, intentional use of an individual's previous name and pronoun by managers, supervisors, or coworkers is contrary to the IC's goal of treating all employees with dignity and respect. It should also be noted that in some circumstances, such intentional conduct could result in legal consequences.

Hiring process: During the hiring process, hiring managers and supervisors should be sensitive to the possibility that applicants have transitioned or are in the process of transitioning. The name and gender on the application may correspond with the person's current identity and background or suitability checks may disclose a previous name and/or legal gender different from the one the applicant currently uses. If hiring managers or supervisors are uncertain of how the applicant identifies, it is appropriate to respectfully ask the applicant which name and pronouns the applicant uses.

Co-Workers' Personal Views: Gender-based stereotypes, perceptions, or comfort levels must not interfere with the ability of any individual to work free from discrimination, including harassment.

Recordkeeping: Consistent with the Privacy Act, at the employee's request, the records in the employee's Official Personnel Folder (OPF) and other employee records (pay accounts, training records, benefits documents, and so on) should be changed to reflect the employee's name and gender designation. The employee must submit the requisite documentation to update the employee's OPF. *See* 5 U.S.C. 552a (d). Even if the OPF is not updated, agencies are encouraged to adopt procedures that allow individuals to use their name or first initial in or on e-mail accounts, employee directories, business cards, name tags, and similar items not posing legal or security implications.

Sanitary and Health Facilities: The Department of Labor's Occupational Safety and Health Administration guidelines require agencies to make access to adequate sanitary facilities as open as possible for all employees in order to avoid adverse health consequences. For an employee who is transitioning or has transitioned, this means that agencies should allow access to restrooms and (if provided to other employees) locker room facilities consistent with the employee's gender identity. Employees who are transitioning or have transitioned should not be required to have undergone or to provide proof of any particular medical procedure in order to have access to facilities designated for use by a particular gender. An agency may not require an employee to use facilities that are unsanitary, potentially unsafe for the employee, located at an unreasonable distance from the employee's work station, or that are inconsistent with the employee's gender identity.

SUBJECT: Key Elements to Include in Policies Covering Employment of Transgender Individuals in the Intelligence Community

Agencies are encouraged to provide all-gender, single-user restrooms when feasible to maximize comfort and access for everyone, including individuals with disabilities and those with young children; however no individual should be limited to using these facilities. Because every workplace is configured differently, agencies with questions regarding employee access to any facility within an agency may contact their EEO office for further guidance.

Security Clearance Process: When conducting a background investigation, the investigator should be sensitive to the possibility that individuals have transitioned or are in the process of transitioning. If a previous name and/or legal gender designation on an individual's security paperwork does not correspond to the currently used name and/or legal gender or has changed over time, in order to avoid unintentional disclosures to others, security personnel should respectfully discuss the use of pronouns, name, and gender with the individual, as not everyone may know the person's transgender status. Understanding how individuals should be referred to when contacting their current and former co-workers and associates, family, and neighbors is critical to maintaining individual safety and privacy, as well as preventing uncomfortable workplace interactions or possibly even discrimination. The role of security in conducting a background investigation includes protecting the IC's workforce and applicants by gathering and protecting information consistent with applicable law. Unintentional disclosures can have severe consequences for a transgender individual and their safety.

Insurance Benefits: Transitioning employees who already have Federal insurance benefits (medical, dental, life, or any other insurance program) should contact the Office of Personnel Management for guidance.

Sick and Medical Leave: Employees receiving treatment as part of their gender transition may use sick leave under applicable regulations. Employees who qualify under the Family Medical Leave Act also may be entitled to medical leave for transition-related needs for themselves and their families. Agencies shall equally apply policies, benefits, and workplace flexibilities for pregnant employees, regardless of the gender identity of a pregnant employee.

Training and Assistance: Agencies may designate an individual within their EEOD office (or equivalent) to assist managers and employees consistent with the transitioning employee's wishes and to provide training as needed. Such an individual may be designated a Transgender Resource Coordinator. If designated, contact information should be listed along with reference to the agency's transgender policy on the IC element's EEOD website(s).

Workplace Assignments and Duties: Transitioning employees should not be required to have undergone or to provide proof of any particular medical procedure (including proof of surgery) in order to be treated as their gender for all job assignments and duties.

SUBJECT: Key Elements to Include in Policies Covering Employment of Transgender Individuals in the Intelligence Community

Applicability

An element's policy applies to permanent staff employees; time-limited employees; civilian detailees to that element; Intergovernmental Personnel Act detailees; Presidential appointees; and applicants for civilian government employment.

Definitions

Gender Identity: An individual's internal sense of being male or female, or an identity other than the traditional definition of male or female. The way an individual expresses gender identity is called "gender expression," and may or may not conform to social norms associated with a particular gender. Gender identity is distinct from sexual orientation, which describes to whom a person is sexually and/or romantically attracted.

Transgender: Transgender individuals are people with a gender identity that is different from the sex assigned to them at birth. People who are women but were assigned the male sex at birth may refer to themselves as transgender women or women. Likewise, people who are men but were assigned the female sex at birth may refer to themselves as transgender men or men. People who have a gender identity other than the traditional concept of male or female may simply self-identify as transgender, non-binary, gender non-conforming, or another term. Finally, some individuals who fit the definition of transgender do not identify themselves as such.

Transition: Some individuals socially and/or medically transition to more fully align themselves with their gender identity. Social role transition – that is, living in the gender that is consistent with an individual's gender identity – is an important, and often the most important, aspect of a person's gender transition. Transgender individuals may also seek some form of medical treatment such as counseling, hormone therapy, electrolysis, and surgical interventions as part of their transition. These treatments may be deemed medically necessary for many individuals. Some individuals will not pursue medical treatment because of their age, medical condition, financial resources, or other personal circumstances, or because they feel the treatment is not necessary for their well-being. Some individuals who identify as transgender may not pursue social transitions; this may be for a variety of personal reasons including safety issues or because they feel it is not necessary for their well-being.

// signed//

Rita M. Sampson

12-18-2017

Date