



# Transitioning at work - know your rights

This know-your-rights guide is primarily to support trans education professionals who are proposing to transition at work. The National Education Union wants to support trans education professionals in the workplace and to help make your transition at work as smooth as possible. We also want to raise awareness of the issues that trans education professionals face in the workplace; we therefore encourage school leaders and other educational professionals to familiarise themselves with the issues outlined in our suite of documents.

## What we say

When you read through this document you may have questions about what happens in your particular workplace and there may be collective issues that affect other members.

If you are comfortable to do so, you can discuss workplace matters with your workplace rep initially as they will know whether similar concerns have been raised by other members. If you are not comfortable discussing your concerns with your rep, we recommend that you approach your regional office/NEU Cymru. If you do not have a rep at the moment, it would be a good idea to get members together to elect one. Further advice on this is available at

<https://neu.org.uk/get-involved>

There is a network of trans education professionals within the NEU that the region/NEU Cymru can put you in touch with.

## An overview of your rights & protections

At the National Education Union we value the diversity of our membership and are determined to advance equality and challenge discrimination in the workplace.

All educational professionals are entitled to work in a safe and healthy environment free from unlawful discrimination and are entitled to be treated with dignity and respect in their workplace.

Our experience is that trans education professionals are particularly susceptible to unlawful discrimination, particularly harassment and bullying. This can be particularly debilitating if this treatment coincides with transition.

The primary audience is trans people working in the education sector. This guidance can also be utilised by schools and colleges where there are no out trans staff/employees. It is important that every school promotes attitudes which develop trans inclusion.

## Protection from discrimination and harassment

All trans education professionals have specific protection from discrimination at work on grounds of gender reassignment under the Equality Act 2010. The protection covers direct and indirect discrimination, harassment and victimisation. You are protected before, during or after your transition, whether or not you are under medical supervision.

Although referred to in the Equality Act 2010 the terms 'gender reassignment' and 'transsexual' are now considered by many to be outdated and misleading. Medical intervention is not necessary for you to be protected by the act.

You are also protected whether you are a permanent, fixed term, full-time, part-time, supply or agency worker. Your colleagues, managers and governors are prohibited from discriminating against you. If you are an agency worker working on a day to day or longer term contract, your agency and the hirers for whom you are working are prohibited from discriminating against you.

Treating you less favourably at work than another colleague in similar circumstances on grounds that you propose to undergo, are undergoing, or have undergone any part of the process of gender reassignment would be discriminatory. There is no need for you to show that you propose to or have undergone surgery or hormone treatment.

Schools, colleges, local authorities and multi-academy trusts have a statutory duty to be proactive in eliminating discrimination and promoting equality of opportunity for staff and pupils. They must assess the impact of their policies and procedures on the people affected by them and take steps to remove any barriers that come to light where it is proportionate to do so. Contact your workplace rep, local secretary, or local equality officer if you want to get involved in reviewing the equality impact of policies and procedures in your workplace.

## Gender recognition

Trans education professionals do not need to have a gender recognition certificate to qualify for employment rights protections and not all trans people apply for gender recognition. Some people apply for a certificate so that they can change the sex indicated on their birth certificate and secure recognition for all legal purposes as their acquired gender.

Adults can apply for legal recognition of their acquired gender under the Gender Recognition Act 2004. A gender recognition panel will assess an application against a set of criteria before awarding a gender recognition certificate. Applicants must provide evidence that they have a clinical diagnosis of gender dysphoria, that they have lived in their acquired gender for at least two years, and that they have declared that they intend to live in that gender permanently.

They must also provide evidence that they have lived in their acquired gender for at least two years, and that they have declared that they intend to live in that gender permanently.

You shouldn't be asked if you have a gender recognition certificate by your employer and your employer should not ask to see a gender recognition certificate.

Your employer also has a specific duty not to disclose information on your gender history or your transgender status. It is a criminal offence to disclose a person's gender history or transgender status without authority.



Gender dysphoria is a clinical term for when someone experiences a mismatch between their sex and their gender identity. Discomfort and distress can come from hiding their identity, prejudice and discrimination, and/or not being supported.

## Who to tell

You are not required to tell your employer or colleagues about your intention to transition. The choice is yours and yours alone. If you do decide to disclose your intention to transition, or if you need advice on whether to disclose your intention, we recommend that you approach your regional office/NEU Cymru.

If you do decide to disclose your intention to transition at work, please also consider discussing your intention with your NEU workplace rep. You may or may not wish to involve or consult with your rep in the early stages but we recommend that you let your rep know your plans once you have agreed these with your employer.

When you are ready to disclose your intention to transition, you should first inform your line manager or an HR colleague. You should discuss with them who will be the main point of contact to help manage your transition from the organisation's perspective.

You should discuss with your contact how and when you plan to tell the wider school community. This will include the school management, the teaching and support staff, the school governing body, your students and their parents/carers. You should be involved in developing your Transition Care Plan (see the NEU checklist on Transition Care Plans) and should be involved in every stage of the communication. You should consider whether you wish to inform colleagues and if so how will this be done, whether you wish to inform colleagues yourself or whether you would prefer someone do it for you. You also need to consider whether you wish to inform students and parents/carers and if so, how and when will this be communicated.

We recommend that you build into your plan, communication with your NEU workplace rep, and your local branch and regional or national office. In our experience, it is useful for your union support network to be aware of your plans in the event that local media take an interest in your transition. As we have said, your transition is your private concern, but it is best to be prepared for outside interest in your private matters.

## When to begin transition

You should discuss with your contact when you would like your transition at work to start. Transitioning mid-term may produce certain challenges. There may be an increased chance of increased stress on you.

Make sure that your contact is aware that transition can be a long process and there are some aspects of the timing of treatment over which you will have no control.

Transitioning at the beginning of a new term or year is sometimes preferred as it gives you breathing space in the holiday break. It also allows adequate time for records or admin to be brought in line, so there should be no confusion when you return to work with a possible new name.

## Records

Information on your gender reassignment and your gender history is considered to be sensitive information under the Data Protection Act 1998. This information should not be disclosed by your employer without your authority. As we said above, it is a criminal offence to disclose some information without authority.

You should discuss with your contact how and when your school or college employment records will be amended to reflect any change in your name, your gender and your title. No outward facing communications, for example your school website, should refer to your previous name, gender or title. All records, name badges, door signs and internal communications should reflect your changed name, gender and title.

If you apply for a gender recognition certificate, your employer must amend all historical employment records to reflect your recognised identity.

If you are a member of the Teachers' Pension Scheme, the provider has advised us that they are able to change the gender on a pension record as soon as they receive either the gender recognition certificate from the Gender Recognition Panel or the new birth certificate issued by the registrar.

If you happen to require a fresh DBS certificate during or after your transition, we suggest that you contact the dedicated sensitive application team for advice [sensitive@dbs.gsi.gov.uk](mailto:sensitive@dbs.gsi.gov.uk).



Pronouns are the words we use which can depend on a person's gender. Pronouns used correctly are one of the easiest ways to show respect for someone's identity. Some people use 'he' and 'she', while some prefer gender-neutral pronouns like 'they'. You can ask 'what are your pronouns?'

You should let your contact know whether and when you are planning to change your name and what pronouns you will be using. You should discuss how you wish colleagues, students and parents/carers to be informed of your name and pronouns. You are entitled to be addressed by the name and pronouns that correspond to your gender identity at all times. Be prepared for mistakes to be made in the early days. Deliberate and persistent mis-gendering or addressing you by your previous names, however, is likely to amount to harassment which you may wish to challenge more formally.

## Facilities

You should discuss your wishes regarding toilets with your contact. You should let your contact know what would make you most comfortable. If your employer agrees that what you want is realistic and possible, then you should arrange for this to be included in your transition plan.

You should be free to use the toilet facilities that correspond with your gender identity. If you don't wish to use the facilities that correspond with your gender identity immediately, you should incorporate your use of facilities into your transition plan. If you have anxiety issues connected with gender dysphoria, you may wish to use another facility separate from other staff for a period of time. If you identify as non-binary, or neither male or female, gender-neutral facilities should be available. Your transition plan will be unique to you. Whatever plans you make, you should not be told that you must use the facilities that correspond with the gender you were assigned at birth.

## Dress code

The NEU believes that there is no need for dress codes to refer to gender. Most dress codes for staff are gender neutral. Some schools and colleges have dress codes that specify different codes for men and women. If there is such a code in your school or college you should discuss with your contact whether a gender neutral uniform should be offered to all workers.

## Time off/absences

You should discuss your anticipated absences associated with your transition with your contact. The nature of your transition will determine the frequency and length of your absences.

You may need time off for a series of clinical appointments; you may need time off to attend counselling. Longer less frequent absences might be necessary for hormone treatment or surgery and convalescence.

Protection under the Equality Act extends specifically to absences from work to enable you to undergo gender reassignment; this can include medical or social transition. You must not be treated less favourably than you would have been treated had you been absent for another reason or because of sickness or injury. Any rules on absences from work must be applied equally. Absences relating to your transition should not be used to your detriment to deny pay progression or promotion.

The NEU has successfully argued on behalf of trans education professionals that absence related to transitioning would not be counted for the purposes of sickness absence monitoring.

## **Appraisal, objective setting & pay progression**

As we have said, when you discuss your plan with your contact, you should discuss your transition and possible absences. You should raise the fact that you intend to take time off in relation to your transition when you agree your appraisal objectives. If your objectives have already been set, you should ask for your objectives to be adjusted to take account of your proposed absence.

Your employer should not cite absences related to your transition to justify not awarding pay progression.

## **Where can I find more information?**

If you need further advice, please contact your workplace representative in the first instance.

You may also seek advice and guidance from your regional office/NEU Cymru.

Further information and guidance on harassment and discrimination on grounds of race, sex, pregnancy and maternity, transgender status, disability, sexual orientation, religion or belief and age can be found at [www.teachers.org.uk](http://www.teachers.org.uk)