

Accounting Firm Management: What to Do When Andy Accountant Becomes Andrea Accountant

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ABSTRACT

Laws are continuing to evolve with respect to discrimination against persons with gender identity issues in the workplace. The accounting profession can be especially conservative where issues surrounding gender are especially sensitive and complex. One of the more challenging scenarios for employers is facilitating the gender transition process. Effectively communicating with co-workers and clients about the change, modifying personnel documents at the appropriate time, and dealing with more mundane issues such as restroom usage and dress code represent the tip of the iceberg. Simply developing a policy and creating guidelines will not instantly create an environment where all employees are treated as equals, but ensuring that all employees are adjusting to the necessary changes can prevent losing valuable employees.

Keywords: gender transition; transition guidelines; gender identity; diversity; transgender

INTRODUCTION

On May 23, 2011, Tennessee Governor Bill Haslam signed legislation that prevents cities from adopting discrimination protections for homosexuals and transgender persons. House Bill 600 states in pertinent part:

“SECTION 2. Tennessee Code Annotated, Section 4-21-102, is amended by adding the following language as a new, appropriately designated subdivision:

() “Sex” means and refers only to the designation of an individual person as male or female as indicated on the individual’s birth certificate.”

Many business leaders across Tennessee have hailed this legislation as a law that will make doing business in the state easier and will minimize lawsuits when dealing with employees or potential employees who are gay, lesbian or transgender. Then on July 5, 2011, Connecticut Governor Dan Mallory signed “An Act Concerning Discrimination” which states that employers and contractors are explicitly prohibited from discriminating on the grounds of “gender identity or expression,” which the legislation defines 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.

Many accounting firms now operate in multiple states, and these firms should be aware that rules for accommodating employees with gender identity issues vary dramatically between jurisdictions. Thirty-three states do not currently address discrimination in employment based on gender identity, although several of these states have such legislation pending. The new legislation in Tennessee almost seems to permit such discrimination. The remaining 17 U.S. states have legislation that prevents discrimination in employment based on gender identity. Nevertheless, it is the recommendation of the authors of this article that regardless of the laws currently in place, it is in the best interest of the profession to accommodate these employees.

One of the authors of this article recently attended an annual accounting conference and ran into a colleague who looked familiar but seemed difficult to identify. After a brief conversation, this author finally realized “she” used to be a “he.” As the colleague explained, she always felt like a woman who was born with the wrong body. The exchange prompted an interesting discussion among several of us at the conference about just how often this sort of “transition” has happened among accountants (more often than many readers might suspect). In fact, more than 25 male-to-female sex reassignment surgeries are performed in North America every week.¹

Consequently, the odds are higher than you might expect that your firm could expect this following scenario: An employee steps into the managing partner’s office and states that in three months he will be transitioning to live and work as a female. The ramifications of the partner’s response at this point not only can have potential legal ramifications, depending upon the evolving laws, but can also affect this employee’s sense of dignity, fair treatment and acceptance in the workplace.² If the employer chooses to accommodate the employee in the transition, beyond any legal requirements, a host of complex and sensitive issues will be encountered by the manager, employee, co-workers and clients.³ Estimates of the number of transgender individuals are challenging to obtain in part because being transgender (or any form of gender non-conformity) is not surveyed by the U.S. Census. However, the number of transsexuals – those who receive surgery to change their sex – has been estimated at 1% of the U.S. population.⁴ If the number of persons in this category is small, why should accountants care? Well, as members of what is perceived to be a conservative profession, it is probably more difficult for an accountant to admit having a gender identity disorder (GID) to a colleague than it would be for an actor. Moreover, sometimes the best minds come to us in unusual packages, and if we want to benefit from their expertise, we need to recognize the unique needs of someone who may be different. Being informed could prevent the loss of a valuable employee, a costly lawsuits or negative public relations for the firm.

While gender transitions in the workplace are infrequent, when they occur, the challenge can be overwhelming. Ideally, employers will proactively formulate their approach in accordance with their organizational culture (and any relevant laws) before an employee’s request for assistance and support is made. Decisions and statements made reactively or on the fly can, and have had, unfortunate outcomes for employees who experience a loss of acceptance, respect, and dignity (and

perhaps even leave the firm) as well as for employers who may unknowingly violate relevant anti-discrimination laws.

BACKGROUND: TRANSGENDER EMPLOYEES IN THE WORKPLACE

There is a continual increase in the number of private employers, especially large firms, that include gender identity in their equal employment opportunity (EEO) statements. Of Fortune 500 Companies, approximately 41% protect gender identity.⁵ According to the 2011 Corporate Equality Index Report, issued by the Human Rights Campaign (HRC), 472 out of 620 (76%) participating employers prohibit discrimination based on gender identity.⁶ Of the businesses surveyed by the HRC, 79% have incorporated gender identity into diversity training or have implemented specific transition guidelines.⁷

Beyond covering gender identity in EEO statements, some employers have created gender transition guidelines or plans. We should clarify that gender transition does not always include sexual reassignment surgery; a gender transition is the process of modifying the expression of an individual's gender identity.⁸ An employer may have a transsexual employee, which involves physically altering one's body to be consistent with the person's desired gender identity.⁹ In this case, the gender transition process is likely to be longer and have many obvious changes to the employee's original appearance. However, an employer may also have a transgender employee, an individual who expresses his/her gender identity in a presentation different from cultural norms, which may **not** include surgical changes. Thus, transgender is a term that covers all non-conforming gender expressions and can include transsexuals as well. There are few differences between a workplace transition for a transsexual or a transgender individual who is not physically transforming. Both situations will change operational aspects of work life (e.g., the restroom used, workplace dress, and name used). The only major difference might be the leave necessary for medical procedures for a physically transitioning employee.

Gender transition guidelines provide a structure that can affect many parts of an organization. Most obviously affected is the department or team in which the transitioning employee works, but also Human Resources (HR) is likely to be involved in the transition as a source of information, sensitivity and support. Many larger companies have created employee network groups for transgender employees, since navigating through the transition in the workplace can be stressful. While there may be no other transgender employees at his or her particular worksite, others going through similar situations may exist at other worksite locations and can provide advice and guidance. Most notably, accounting firm Ernst & Young has been continually recognized by Diversity Inc, *FORTUNE*, and the Human Rights Campaign as one of the top employers for accommodating the needs of transgender employees.

Having a pro-active approach to gender identity issues and determining how a company plans to handle the transition of an employee has little direct expense. The only cost associated is the time that human resources and legal departments will spend altering EEO policies and creating transition guidelines. While the time involved could be considerable, especially for companies that are meticulous in developing policies to eliminate future problems, resources are available to companies to ease this process. For example, the Society for Human Resource Management, the HRC, and various transgender advocacy organizations, have created templates and guidelines on gender transition within the workplace.

There are, of course, difficult issues that do not have simple solutions; even within organizations that have developed transition guidelines, there are differing opinions on how to handle some of these situations. For example, one of the most common questions asked by co-workers is: "What about the restroom?" Other operational topics of concern for employers include: dress codes, insurance plans,

company identification, personnel records and interactions with clients and co-workers. While federal legislation might regulate some of these situations, current legislation (and the lack thereof) leaves room for interpretation. It is currently up to employers to determine how their policies will represent their corporate culture, any relevant legislation, and the ethics surrounding the handling of transgender employees.

CREATING TRANSITION GUIDELINES

If employers choose to incorporate gender identity in their Equal Opportunity policy, creating gender transition guidelines can be useful for both managers and employees. Often, transition plans and guidelines are an extension of the anti-harassment policy in the employee handbook but narrowed in content to those areas affected by a gender transition. Providing guidelines to describe how the organization will handle a gender transition reflects the tone for how the organization feels about the inclusion of transgender employees.

Employees may be unfamiliar with what being transgender truly means, and defining general terms and concepts can be beneficial in the organization as confusion on this topic abounds. One recent study, for example, found that employees in the same workplace context can have substantially different levels of awareness around gender identity, and sexuality more generally.¹⁰ The clarification of responsibilities will help to give a sense of what each party's role in the process is.¹¹ Managers and supervisors must understand that they are responsible for ensuring their staff remains productive and professional. An employee, who feels unfairly treated, ostracized or neglected will likely experience stress distractions at work, and/or lower performance.¹²

DEALING WITH CO-WORKER CONCERNS

When an employee begins transitioning there are likely to be concerns – and potentially some element of resistance -- from fellow co-workers or supervisors. Some may feel that their own personal beliefs do not support transgender lifestyles; as mentioned earlier, education is important. Altering EEO policies and creating gender transition guidelines are the employer's attempt to maintain a healthy work environment for all employees so that the business can thrive; this message is important to reiterate to all employees. Any communications to co-workers regarding the transition of an employee should stipulate respect for transitioning employees.

When and why the organization begins the process of including gender identity in their EEO policy could make a large difference in co-worker's comfort level with a transition occurring. The transition of an employee might receive a better reaction from co-workers if those co-workers have previously received information about what a transition entails. Educating people about a minority group time, especially to achieve the desired result of respect. Including gender identity in the organization's diversity training *before* an employee comes forward with news of a transition could also prove to be beneficial for the employer, transitioning employee, and co-workers. Organizations that do not begin the process until an employee comes forward, however, are not acting erroneously; encouraging diversity and understanding is better late than never.

Co-workers may have questions about the transition that are not included in the transition guidelines or addressed in educational venues. There are conflicting views on whether or not addressing such questions to the transgender employee directly is appropriate. Some suggest doing so only in a polite way in regards to the preferred pronouns used to address or refer to them at work (*e.g.*, he versus she) and general questions about how the transition process is going. Others suggest the broad method of: "be as open and honest as you would like your co-worker to be with you." Perhaps the most appropriate method in these situations is for the co-worker to first address concerns with

supervisors or HR representatives. First speaking with a supervisor that is working closely with the transgender employee might save some embarrassment for all parties involved. This does not mean to imply that all transgender employees do not wish to discuss their transition at all; however, until that is determined it is a very personal matter to bluntly question a co-worker.

A manager should plan to meet with all stakeholders in the transition and determine how they fit into the planning of such a transition. Are there job related deadlines or events that need consideration? Is there any paperwork for short-term leave for surgery that needs to be completed? Questions such as these require discussion with all stakeholders. These plans should stress confidentiality to these individuals because stakeholders will have more information regarding the transition than other employees. With the disclosure of this personal information, discretion is necessary.

Once a transition for a transgender employee is imminent, important dates should be outlined to the stakeholders but flexible for changes if necessary. Typically important dates include the date the employee will begin dressing as his or her desired gender, when pronouns change (referring to the employee as he or she), and when a leave will be taken. Determining when and how the employee wishes to inform co-workers is a very important element of the transition and the content and format should be acceptable to both the transitioning employee and the employer.

HANDLING THE SENSITIVITY SURROUNDING RESTROOM USAGE

While it may sound mundane, often co-workers are concerned about the logistical issue of using the restroom, once a transition is announced. If you do not think the restroom issue can be potentially explosive, just recall what recently happened at Macy's when a worker was fired for refusing to allow a transgender person to use the women's dressing room.¹³ From a compliance perspective, the only federal legislation affecting the restroom policy of a company is the Occupational Safety and Health Administration (OSHA) sanitation standards for employers. OSHA requires that employers "make toilet facilities available so that employees can use them when they need to do so," and that employers "may not impose unreasonable restrictions on employee use of the facilities."¹⁴ Due to the absence of a uniform federal policy regarding restroom standards for transgender employees, practices vary widely. The Human Rights Campaign states that its recommended restroom standards are "straightforward" but it has been argued that the standards contradict each other. Specifically, the HRC states that:

1. Employees may use the restroom that corresponds with their full-time gender presentation. An employee should never be required to use the restroom of his or her designated sex at birth once he/she has begun transitioning and has changed their full-time gender presentation.
2. A transitioning employee may opt to use single-occupancy or unisex facilities, if available and reasonably accessible, for some temporary period during the transition process, but should not be required to do so permanently.¹⁵
3. Coworkers uncomfortable with a transgender employee's use of the same restroom may use separate restroom facilities.

Ernst & Young utilizes an interesting indicator of when the presentation begins, "specifically...following commencement of the 'real life experience' and from that point forward." There is no mention of alternative options during transitioning or any reason provided why a transitioning individual would need to use alternative facilities. The determining factor of when to begin using restrooms that correspond with gender identity is based solely on when the "real life experience" begins. Ernst & Young uses the "real life experience" as the starting point for most actions and planning involved in the transition of an employee. The real life experience is the time "prior to surgery, assuming the role of their reassigned gender," and the transitioning employee alone

determines the time. The use of a "real life experience" allows for ample flexibility for both the employer and the employee during the process, which either party would likely find beneficial.

Beware, however, that state legislatures may still attempt to enact laws that govern restroom usage as well. House bill 2279 was introduced in the Tennessee legislature in January 2012 to amend the state law so that all persons would be required to use restrooms and public dressing rooms based upon the gender designated on their birth certificates, and each violation would trigger a \$50 citation. While opponents of the bill are optimistic that it will not pass, the fact that it is being considered at all could have a significant impact on a wide range of firms and clients.

ARTICULATING DRESS CODES

By creating dress codes with transgender employees in mind, gender stereotypes in dress are likely avoided. As with all other areas of a transgender inclusive workplace, there are many options for developing an inclusive dress code. Many companies choose not to modify the existing dress code at all when creating transition guidelines for the company. Instead, employers create guidelines for the transitioning employee and his or her managers on how to handle the change in dress of the employee. Ernst & Young allows transitioning employees to decide when they will begin to dress in their desired gender.

HRC's Transgender Inclusion In The Workplace, recommends to employers that they adopt gender neutral dress codes that avoid any gender stereotypes. Currently the legality of gender stereotypes in dress codes is unclear, but many legal experts recommend that because of the increasing number of cases¹⁶ that suggest the courts are recognizing that gender stereotyping could be a violation of Title VII of the Civil Rights Act, employers should exercise caution. Therefore, employers should enforce a dress code that applies to all employees – for example: (1) dress neatly; (2) be clean; (3) be professional; (4) do not wear fragrances; (5) do not wear clothes or items that would pose safety or visibility issues; and (6) do not wear jewelry on the face except for earrings.

Employers that allow transitioning employees to dress in their desired gender are likely to have concerns about the dress of the employee. In order to set guidelines that managers can use, Ernst & Young requires that transitioning employees "comply with the same standards of dress and appearance that apply to all other people in their workplace and similar position."¹⁷ Such vague guidelines allow the employee who is transitioning to have his or her own personal style and to fully express his or her gender identity in the workplace, as other employees already do.

Ernst & Young reminds its managers in the transition guidelines that a gender transition does not mean managers lose the ability to review dress code adherence.¹⁸ This is an important right to highlight to managers as an employee begins the transitioning process. Simply because an employee requires accommodation in some areas of the workplace does not mean a free pass for inappropriate workplace behavior. This is also a concept that should be reviewed with co-workers. The key intent behind any transgender inclusive workplace is equality, not favorable treatment.

HANDLING CHANGES IN EMPLOYEE RECORDS

Legal recognition of a gender change is a confusing process for transitioning individuals and for employers. An employer has no obligation to modify personnel records until the employee in his or her desired gender has all the legal documents (e.g., a modified birth certificate or driver's license) that represent his or her change. In many cases, government entities will not recognize a sex change unless there has been a sex reassignment surgery (SRS). However, financial or personal reasons may

restrict a transgender individual from receiving a SRS. Furthermore, it is a standard of medical care that in order to have the surgery, individuals must live in their desired gender for a year prior to the actual surgery. If an employer refuses to acknowledge transitioning employee's desired gender or name without legal documentation it would make living in their desired gender for a year very difficult, if not impossible, thus preventing the surgery from occurring. If, however, an employer is willing to accommodate and assist the transgender employee throughout this tumultuous time period, the employer will likely incur some headaches of its own.

For example, changing any forms of employee documentation to the person's desired gender before the legal changes have occurred could cause some discrepancies with outside agencies. All states, since the passage of the Real ID Act in 2005, require judicial approval before legally changing a name. In order to receive a legal name change, some jurisdictions first require SRS to occur. If there are no complications due to the legality of a name change, in-house identification and records should be dealt with sooner rather than later. If possible, involved parties should begin the process of these changes before the employee begins assuming the role of his or her desired gender. The simplest way to begin record and identification changes is to start at the beginning. All of the "first day" paperwork should be updated for the transitioning employee. Attention should be paid to confidentiality and timeliness when dealing with document changes. For example, changing e-mail addresses and directories often involve IT departments and other individuals who will be made aware of the situation. The extra care for these matters is important because, if done correctly, it can minimize questions and concerns from clients and other external stakeholders.

Higher profile employees may warrant more in-depth record changes, such as modifying existing documents in the firm, due to the likelihood of those existing documents being relevant in the future. Most organizations with transition guidelines suggest developing a plan in advance, concerning how name discrepancies will be handled when they occur. Another element of identifying records that should not be overlooked is any workplace photographs of the transitioning employee.

Since accountants in many jurisdictions need to have professional licenses in order to practice under the appropriate Board of Accountancy, a legal name change is required. In most jurisdictions, the employee must submit a legal name change to the appropriate Board of Accountancy before the employee can practice under that license. This element of the transition rests entirely on the employee being proactive in his or her transition process. There are varying regulations regarding professional licensing depending on the jurisdiction, so the amount of employee time and effort will vary. Employers willing to accommodate a transitioning employee should be prepared to work with the employee if there are any issues in receiving changes to a professional license.

CONCLUSION

Simply developing a policy and creating guidelines will not instantly create an environment where all employees are treated as equals. To have that type of environment in the workplace will require care and engagement on the part of the employer, HR, and line managers. Dealing with the emotional needs of employees is rarely a task managers welcome and is often ignored. When managing a situation as serious as a gender transition, managers must be very aware of how members of the workplace are reacting. Ensuring that all employees are adjusting to the necessary changes can prevent losing valuable employees.

For managers who are inexperienced with the demands of managing a transition of a transgender employee, creating the framework of a transition plan can be helpful. This is not always included in transition guidelines, but can be. Ernst & Young provided a "Job Related Planning for a Gender Transition" appendix in its transition guidelines. To be effective, these plans should identify the

people that are best suited for an employee to begin the discussion of transition. Whether that person is an HR representative or manager, an appropriate individual for this discussion should be stated clearly. If HR feels the front line managers may not be adept in a situation such as this, identifying an HR representative or a member of a diversity team may be more appropriate.

Diversity training can be an integral piece of managing an inclusive workforce. Training on gender identity can range from small meetings, inclusion in larger diversity training courses or consultation from external trainers. The HRC recommends having training on gender identity taught by someone with specific experience with transgender issues, not a general diversity instructor.¹⁹

Many accounting firm managers may read this article and think, “This will *never* happen in my firm,” and many cases, they may be right. But in today’s society, as gender identity disorder (GID) is increasingly diagnosed²⁰ there will likely be some bright accounting minds housed in bodies that may change due to GID. Instead of being frightened by misinformation, our profession should be proactive so that we ensure that we retain our best and brightest minds, regardless of how their outer packaging may change over time.

In conclusion, when managing a transgender employee and the changing work environment consequent to an employee’s transition, there is no room for a hands-off approach to management. To ensure the safety, security and comfort of all employees, managerial leadership, procedures and the enforcement of those procedures must be a priority. Maintaining an environment in which all employees feel comfortable disclosing personal concerns will be crucial characteristics for employers, HR professionals, and managers during this time.

¹ <http://www.faqs.org/health/topics/64/Sex-change-surgery.htm>

² Cadrain, D., “Accommodating Sex Transformations,” *HR Magazine*, 54(10), 59-63 (2009).

³ Trotter, R., “Transgender Discrimination and the Law,” *Contemporary Issues in Education Research*, 3(2) 55-61 (2010).

⁴ <http://www.hrc.org/issues/9598.htm>

⁵ http://www.hrc.org/issues/workplace/equal_opportunity.asp

⁶ <http://www.hrc.org/cei> -- page 24

⁷ <http://www.hrc.org/cei> -- page 24

⁸ http://www.hrc.org/issues/gender_identity_terms_definitions.asp

⁹ http://www.hrc.org/issues/gender_identity_terms_definitions.asp

¹⁰ Kormanik, M.B., “Sexuality as a Diversity Factor: An Examination of Awareness,” *Advances in Developing Human Resources*, 11(1), 24-36 (2009).

¹¹ Luther, Samir, *Transgender Inclusion in the Workplace: 2nd Edition* (Human Rights Campaign Foundation, 2008), pg. 26.

¹² Kormanik, M.B., “Sexuality as a Diversity Factor: An Examination of Awareness,” *Advances in Developing Human Resources*, 11(1), 24-36 (2009).

¹³ <http://abcnews.go.com/blogs/business/2011/12/texas-macys-employee-fired-for-allegedly-violating-stores-lgbt-policy/>

¹⁴ 29 CFR 1910.141(c)(1)(i): Toilet Facilities

¹⁵ Luther, Samir, *Transgender Inclusion in the Workplace: 2nd Edition* (Human Rights Campaign Foundation, 2008), pg. 33.

¹⁶ *Jespersen v. Harrah’s Operating Co.*, 444 F.3d 1104 (9th Cir. 2006); *Lewis v. Heartland-Inn Ankeny et al.*, 591 F.3d 1033 (8th Cir. 2010); *Taylor v. Temp-Air*, 758 F.Supp.2d 563 (2010); *Sereno-Morales v. Cascade Food, Inc.*, 2011 U.S. Dist. LEXIS 51282 (2011); *Nichols v. Azteca Restaurant Enterprises, Inc.*, 256 F.3d 864 (9th Cir. 2001).

¹⁷ “Workplace Gender Transition Guidelines” for Ernst & Young, p. 4 as re-printed on <http://www.hrc.org/documents/Sample-Gender-Transition-Guidelines-Earnst-Young.pdf>

¹⁸ *Workplace Gender Transition Guidelines* for Ernst & Young, p. 4,

¹⁹ Luther, Samir, *Transgender Inclusion in the Workplace: 2nd Edition* (Human Rights Campaign Foundation, 2008), pg. 27.

²⁰ According to <http://web4health.info>, about 1 in every 11,900 men and 1 in every 30,400 women are diagnosed.