PURPOSE OF THE GUIDE

The Philadelphia Fair Practices Ordinance makes it unlawful for "any employer to refuse to hire, discharge, or discriminate against any person because of... gender identity ...with respect to tenure, promotions, terms, conditions, or privileges of employment or with respect to any matter directly or indirectly related to employment." Philadelphia, Pa. Ord. § 9-1103(A)(I). This guide is designed to address common questions that employers have when dealing with gender identity issues. and to assist employers in understanding what types of actions may constitute a violation of Philadelphia's Fair Practices Ordinance.

UNDERSTANDING GENDER IDENTITY AND EXPRESSION: SOME BASIC TERMINOLOGY

Gender Identity

The Philadelphia Fair Practices Ordinance defines gender identity as "Self-perception, or perception by others, as male or female, and shall include a person's appearance, behavior or physical characteristics that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or sex assigned at birth; and shall include, but is not limited to, persons who are undergoing or have completed sex reassignment." Philadelphia Pa Ord. § 9-1102 (h.1).

Gender Expression

A person's gender expression includes the outward manifestations of an individual's gender, including the individual's behavior, dress, and appearance.

Sex

The classification of people as male or female. Children are assigned a sex at birth based on a combination of characteristics including genitals, chromosomes, internal reproductive organs and hormones.

Transgender

Transgender is an umbrella term, which refers to a variety of individuals whose vender identity or expression diverges from societal expectations regarding how a person of that individual's birth-assigned sex should identify or express their gender. The term may include, but is not limited to:

- *Transsexuals* --'Transsexual" is an older term, which originated in the medical and psychological communities, and which is used to refer to individuals who wish to change, or have changed their birth-assigned sex, through hormones, surgery or other physical procedures. Just as many gay people prefer the term "gay" to the term "homosexual," many transgender people prefer "transgender" to "transsexual." Some transgender people, however, still prefer to use the medical term to describe themselves.

- *Cross-dressers* -- Individuals whose gender identity matches their birth-assigned sex, but who sometimes prefer to wear clothes not traditionally associated with their sex- Most individuals who consider themselves cross-dressers do not wear cross-gendered alt ire all of the time, The term "cross-dresser" should not he used to refer to individuals who arc living as members of the opposite sex, in accordance with their gender identity

- *Intersex individuals* --Individuals who, because of their chromosomal make-up or other biological reasons are born with physical characteristics that make their biological sex ambiguous.

- *Other gender non-conforming individuals who identify as transgender* -- There are many members of the transgender community whose gender identity or expression differs front their birth-assigned sex, but who do not specifically identify as transsexuals, cross-dressers or some other specific subcategory. Some of these individuals may take hormones or take other steps to modify their appearance or physiology, but some of them do not. This may sometimes make it confusing for employers in determining what an individual employee's preferences are vis-à-vis gender pronouns and other gender-related matters. In these circumstances, allow the employee to explain how they wish to be addressed.

All gender non-conforming individuals are protected against discrimination under the Fair Practices Ordinance. This pamphlet, however, focuses specifically on addressing common questions that employers have about the rights of transgender employees under the Fair Practices Ordinance, because these are commonly misunderstood issues among employers and Human Resources professionals.

WHAT TO DO IF YOU'RE CONFUSED

The variety of gender expression and identity issues that can arise in the workplace can sometimes be confusing for employers. Remember, it is OK to be confused about how an employee identifies him or herself along the gender spectrum. Be responsive to specific employee requests to be addressed in a gender-identity appropriate fashion, and if you are genuinely unsure about a specific employee's preferences, ask! It is not illegal for employers to make good-faith efforts to understand what an employee's preferences are.

Examples of Appropriate Questions for an Employer to Ask a Transgender Employee:

-- What name do you prefer?
-- What gender pronouns do you prefer?
-- Do you identify as male or female?
-- Are there ways that I can help to make your work environment more supportive?

Examples of Inappropriate Questions for an Employer to Ask a Transgender Employee:

-- Are you a real "man" (or woman")?
-- What are you?

-- Have you undergone surgery?
-- Are you taking hormones?

EXAMPLES OF UNLAWFUL GENDER IDENTITY DISCRIMINATION

The following practices, among others, are illegal under the Fair Practices Ordinance.

- Terminating, refusing to hire, refusing to promote, or otherwise discriminating against an employee because of his or her gender identity or expression.
- Terminating, refusing to hire, refusing to promote or otherwise discriminating against an employee because customers or fellow employees express discomfort with that employee's gender identity or expression.
- Persistently referring to an employee with pronouns that are not gender-identity appropriate, or otherwise refusing to treat an employee respectfully, and in accordance with his or her gender identity.
- Failing to take effective steps to detect and punish on-the-job harassment of transgender employees.
- Prohibiting an employee from using a gender-identity appropriate restroom or locker room.
- Inquiring into the surgeries or medical procedures that an employee has undergone, or requiring an employee to provide legal or medical documentation, as a pre-condition to allowing the employee to act in accordance with his or her gender identity at work.

FREQUENTLY ASKED QUESTIONS

1. Who is covered by the law? Can an employee who has not changed his or her legal documentation or medical "sex" still bring a claim under the law?

The Fair Practices Ordinance defines gender identity broadly to include "[s]elfperception, or perception by others, as male or female.... includ[ing] a person's appearance, behavior, or physical characteristics, that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or sex assigned at birth; and shall include, but is not limited to, persons who are undergoing or have completed sex reassignment." Philadelphia, Pa Ord. # 91102(h.l). Therefore, the Ordinance applies to all employees, irrespective of whether or not they have, or intend to, alter their legal documentation or medical "sex."

2. What type of documentation is appropriate to request before allowing an employee to act in accordance with their gender identity at work?

None. Because all employees are covered by the ordinance-- regardless of whether they

have, or intend to change their legal documentation or medical sex --there is no legitimate reason for an employer to request legal or medical documentation of an employee. Requiring this type of documentation constitutes discrimination, and is prohibited by the Ordinance.

This prohibition on requiring documentation extends to employer requests for documentation prior to allowing an employee to use a gender identity-appropriate restroom or locker room. It would not, however, preclude an employer from requesting proper legal documentation before altering an employee's name or sex designation on official records, such as tax withholding.

3. Does the ordinance require employers to eliminate gender-segregated restrooms?

No. It is still legal under the ordinance for employers to maintain gender-segregated restrooms. The ordinance does require, however, that employers permit employees to access those restrooms in accordance with their gender identity, rather than their chromosomal sex. And. just as non-transgender employees are entitled to use a restroom appropriate to their gender identity without having to provide documentation or respond to invasive employer requests, transgender employees must also be allowed to use a gender-identity appropriate restroom without being harassed or questioned.

4. What about other employees? What if they have safety or moral objections to a transgender individual's use of a gender-identity appropriate restroom?

Other employees' objections to a transgender employee's use of a gender-identity appropriate restroom typically arise from unsubstantiated fears and discriminatory attitudes about trans gender people. By providing information and dispelling stereotypes, workplace trainings can often eliminate most of these concerns.

Those employees who remain uncomfortable with using a restroom at the same time as a transgender employee should be accommodated by being permitted to use gender-neutral restroom facilities (such as a single-stall bathroom), or, if no such facilities are available, by being permitted to arrange to use the restroom alone, at a time when others are not present. Transgender employees should also be offered similar accommodations if they have safety or other concerns about sharing a bathroom with others. Employers should remember, however, that it is illegal to require a transgender employee to use a gender-neutral restroom facility, or to require a transgender employee to use a gender-identity appropriate restroom only when others are not present.

5. Must transgender employees also be allowed to use gender-identity appropriate locker and shower facilities?

Yes. Employers are recommended to take whatever steps are feasible to increase employee comfort with transgender individuals' use of gender-identity appropriate shower and locker facilities, including providing trainings, and ensuring that all locker and shower facilities provide for a level of personal privacy. Employees who are nonetheless uncomfortable with sharing locker or shower facilities with a transgender employee should be accommodated by allowing those employees to shower or change at a time when they will be able to use the facility by in private. Similarly, if a transgender individual requests to use locker or shower facilities in private, because of safety or privacy concerns, the employer should accommodate that request.

6. But won't allowing "men" to use women's bathrooms and shower facilities endanger female employees?

No. Assumptions that transgender employees are likely to victimize other users of restrooms and shower facilities are based on discriminatory misconceptions, and are inaccurate. Transgender employees use restroom and shower facilities for the same reason that non-transgender employees do -- to go to the bathroom and to shower. They do not seek bathroom and shower access in order to victimize fellow employees. In fact, transgender individuals are often the victims of harassment and violence in restrooms and showers.

In addition, employers should remember that they remain free to punish inappropriate workplace behavior, so long as they do so on an even-handed basis. Any employee can be sanctioned for threatening another employee in a restroom or shower facility, or for engaging in other inappropriate behavior, such as watching another employee over the top of a bathroom stall. Transgender employees are not exempted from employer sanctions for inappropriate behavior under the Fair Practices Ordinance, just as a woman or minority employee would not he exempted by virtue of being protected under the Ordinance. Employers are not permitted, however, to rely on discriminatory misconceptions about transgender employees in implementing sanctions for inappropriate behavior, just as employers could not sanction members of a particular race or sex, based on the assumption that they were more likely to have engaged in inappropriate behavior.

TIPS FOR AVOIDING VIOLATIONS OF THE FAIR PRACTICES ORDINANCE

Add gender identity and expression to the company non-discrimination policy.

Adding gender identity and expression to your company's non-discrimination policy is the first step to avoiding violations of the Fair Practices Ordinance. Absent any such change in policy, managers and HR professionals are left without guidance regarding what the company considers to be appropriate employment practices. Make sure that the policy is widely disseminated, and that managers and employees both know where to go with questions or problems, if and when they arise.

Provide trainings to managers and employees.

Providing trainings to managers and employees *before a* problem occurs is vital to avoiding the potential for liability under any anti-discrimination law. This is particularly true in the area of gender identity and expression, where many co-workers and managers may be uncomfortable or unfamiliar with the issues involved. Trainings provide an opportunity to open a dialog about gender identity and expression, and to make sure company personnel understand company policy in this area.

Trainings can also provide the opportunity to build trust, and open lines of communication with transgender employees. Addressing some gender identity issues, such as on-the-job transitions by an employee from male to female or vice versa can pose a difficult challenge for HR

personnel and managers. These challenges are substantially diminished where the employee and the employer are able to adopt a collaborative problem solving approach.

Be willing to openly engage with transgender employees.

Many employers find gender identity issues confusing. It is OK to admit that you are confused, and to ask questions of a transgender employee, so long as you do not do so in a harassing fashion. Often, the employee will be glad that you are making good-faith efforts to understand what the employee wants, and to discuss how their quality of life in the workplace can he improved.

Get advice before you act.

If you are confronted by a situation in which you are unsure whether the action that your company is about to take is legal, seek outside legal expertise. Equality Advocates Pennsylvania and the Philadelphia Commission on Human Relations are glad to provide free technical assistance to companies that are seeking guidance about the scope of their obligations under the Ordinance.

WHERE CAN I GET MORE INFORMATION ON HOW TO AVOID GENDER IDENTITY DISCRIMINATION?

Contact the Philadelphia Commission on Human Relations or Equality Advocates Pennsylvania. Equality Advocates Pennsylvania and the Philadelphia Commission on Human Relations can be reached at:

Philadelphia Commission on Human Relations
34 South 11th Street, 6th Floor
Philadelphia, PA 19107
(215) 686-4670
(215) 686-3238 (TTY)
(215) 686-4584 (fax)
www.phila.gov/humanrelations

Equality Advocates Pennsylvania
(formerly the Center for Civil Rights)
1211 Chestnut Street, 6th Floor
Philadelphia, PA 19107
(215) 731-1447, Ext.15
(215) 731-1544 (fax)
www.equalitypa.org
info@equalitypa.org