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Transitioning at work

Lawyers are like shoes – we have to fit well and be comfortable; lessons in supporting our transgender and gender nonconforming clients

By Traci Hinden-Carey

Those of us who handle employee civil-rights cases hear some of the hardest stories. Imagine not being comfortable in the body you were born in and making the decision to fix that, so you can live your truth. Now, add that you are doing this while attending work every day. You are mixed with emotions that include fear, excitement and terror. This is what our Transgender and Gender Nonconforming clients face. Some employers handle this properly, but many do not, and employees turn to us for help. Unless the conduct is extremely overt toward the transitioning worker, one may chalk it up to simple ignorance of the law and lack of understanding for the emotional and physical changes this worker is going through. A closer look can show that, what may seem innocuous to some, is really damaging and unlawful.

Before we delve into some stories, let's start with some definitions. To be Transgender means denoting or relating to a person whose gender identity does not correspond with the sex registered for them at birth. Title two of the California Code of Regulations (CCR) section 1130 defines this term in subsection (e) as: "'Transgender' is a general term that refers to a person whose gender identity differs from the person's sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as 'transsexual.'" The broad term Transgender could include being misaligned with the binary terms of female or male.

Related terms are Gender Identity and Gender Expression. Gender Identity is your internal knowledge of your gender. Specifically defined by the Fair Employment and Housing (FEHA) regulations 2 CCR section 11030 (b) as: "'Gender identity" means each person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender."

Gender Expression is the outward presentation of a person's gender. Specifically defined in 2 CRR section 11030 (a) as: "'Gender expression' means a person's gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth." (See also Gov. Code, § 12926, subd. (r)(2).)

Gender nonconforming refers to people who do not follow another's idea or stereotypes with respect to how they should feel, look, act or dress based on the binary gender option they were assigned at birth. We would hope that all know that Transgender and Gender Nonconforming persons are protected at work. But there sadly are some employers who continue to get it wrong.

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Below we go through where some employers went wrong.

Case examples

An employee, who we will call Sirhan, was transitioning during Covid and was forced to work from home while working for employer, a not-so-great company. Sirhan was transitioning to a man and was unable to change their name on Zoom and all interactions were held via Zoom during Covid. This resulted in Sirhan being listed with his dead name, Monica, and inaccurate pronouns, listing him as she/her and being called the dead name and being misgendered during meetings.

Sirhan immediately complained to his boss during the first Zoom session. His boss said they would get on it, but he did not hear back. This forced Sirhan to continue to be misgendered and dead-named. Each Zoom session felt like an eternity as Sirhan had begun to grow facial hair that was now noticeable on camera. He felt embarrassed being misrepresented this way (wrong name and pronoun) while leading the Zoom sessions. He was uncomfortable having to correct people and introduce himself repeatedly.

After some time, Sirhan reached out to others he knew who had trans persons on their teams and was able to follow a series of people's prompts to eventually get to the IT person who changed his name and pronoun.

Sirhan previously had an uncomfortable exchange with his boss pre-Covid after returning from an extended holiday break. In a meeting where Sirhan showed up in person and was now wearing clothing that was more masculine and had started to grow some facial hair, Sirhan asked his boss to call him Sirhan. That resulted in his boss, a cisgendered female, named Linda, attempting to get Sirhan to share what that was about by explaining that she understood how hard it was to be a woman.

Linda explained unsolicited to Sirhan about how she understood what she called were "difficulties for women in the workplace." Linda stated she was in charge of a male-dominated environment and she could empathize with Sirhan as it was difficult for her to be a woman in that work culture. Linda stated it was "hard to be a woman." Linda further shared it was very difficult to not take things personally as a woman. She sort of gestured when she was done with this "overshare" that it was now Sirhan's time to share. He sat there and smiled awkwardly because he was insulted and deeply uncomfortable by the one-sided conversation.

Linda did not pick up on Sirhan's discomfort or cues and then explained there was a dress code that he had to adhere to at work that included grooming standards and gestured on her own face around the mustache area. Sirhan did not want to ask anything. He understood Linda was gesturing to represent his stubble hair starting to form as what was not allowed. Sirhan believed this especially as she said that to him upon the first presentation of him seemingly more "male." Sirhan's experiences caused him to fall into Gender Dysphoria.

That condition resulted when Sirhan, a trans person, experienced significant distress due to his experienced sex not being recognized in lieu of the sex assigned at his birth. Not all Transgender persons experience this condition. It also can come about without such outside influences as Sirhan experienced here. And if one is already experiencing the symptoms, it can be exacerbated by misgendering.

What violations occurred here?

Not-so-great company, vis-à-vis Linda, engaged in discrimination toward a Transgender employee. Government Code section 12940, subdivision (a) entails that discrimination is prohibited in employment on the basis of: sex, gender, gender identity, gender expression, sexual orientation and disability (Gender Dysphoria can be a basis for disability). That protection is also recognized federally. (*Bostock v. Clayton County*, (2020) 590 U.S. 644; see also CA Gender Recognition Act, fully in effect since 2019.)

This Act is codified within several codes in California, including the Code of Civil Procedure, Health and Safety Code, and Vehicle Code. It requires the "full legal recognition and equal treatment under the law and to ensure that intersex, transgender, and nonbinary people have state-issued identification documents that provide full legal recognition of their accurate gender identity." (§ 2 (a) of the Gender Recognition Act, SB 179 (2017-2018).) This Act further defined "intersex" as: is an umbrella term used to describe natural bodily variations, which can include external genitalia, internal sex organs, chromosomes, or hormonal differences that transcend typical ideas of male and female. (*Id.* at § 2 (c).)

Not-so-great company, via Linda, also engaged in harassment and impermissible non-job-related inquiries in her overshare session, violating the FEHA again, as prohibited by Government Code section 12940, subdivisions (j) and (d). Linda could possibly also be held personally responsible for any harassment under the FEHA, and employers are strictly liable for the acts of a person in a supervisory capacity. (*Ibid.*) Further, the company was required to create a workplace free from discrimination, harassment and retaliation under the FEHA as well, which it failed to do. (Gov. Code, § 12940, subd. (k).)

When Sirhan first told Linda that he was using male pronouns and changed his name, she was charged with ensuring all documentation, inclusive of his Zoom persona, were in accordance with that change. She failed to ensure that this occurred, in violation of FEHA California Code of Regulations, title 2,

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section11034(h). By telling Linda his name and pronoun, he was explaining that he was already transitioning.

That word, transitioning, is defined by the FEHA regulations to include a "process some transgender 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, but is not limited to, changes in name and pronoun usage, facility usage, participation in employer-sponsored activities (e.g., sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures." (Cal. Code Regs., tit. 2, § 1130(f).) Transitioning may also be referred to as a Gender Affirmation Process.

Not-so-great company appeared to violate Sirhan's rights by mentioning a dress code on the first day of seeing him appear as a Transman. (Cal. Code Regs., tit. 2, § 11034(g).) Arguably, Linda's failure to ensure that Sirhan's Zoom name and pronouns were accurate was done in retaliation for his failure to share with Linda when she gave her unsolicited speech about how she understood how difficult it was to be a woman.

Not-so-great company is also liable under another theory under the FEHA. Sirhan opposed the practice of being discriminated against when his name and pronoun were incorrect by complaining. Sirhan was being treated differently than the other employees who were able to have their name and pronouns accurately reflect their gender identity on Zoom. Sirhan's further follow-ups through channels of people when Linda did not respond to him timely qualifies as continuing to oppose that practice. It was Sirhan's efforts that led to eventually having his name and pronoun changed. He would be further protected there from harassment or discrimination because he opposed practices that were forbidden under the FEHA. (Gov. Code, § 12940, subd. (h).)

Since the term Intersex was mentioned above, it is worth noting that we find that term in the acronym we have come to know as LGBTQIA+. For those who do not know, the acronym stands for: Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex, Asexual and HIV+.

We turn to another example

Jenny, a Transwoman, was not "out" at work with her employer, Creepy Lab Inc. Jenny had always presented as "a woman" to her colleagues and superiors and had already transitioned to her comfort, ensuring her Gender Expression corresponded to her Gender Identity before taking the position with Creepy Lab. She worked in a lab that did testing for employers for various job-related situations. Some included drug and Covid testing. They also handled various blood and other tests for those companies that helped people find their familial relations through blood and DNA tests.

Jenny had not worked with the later tests until recently. On Jenny's first day in that department, a coworker named John was showing her how to perform the tests and what various results looked like so she could properly document it for the companies who ordered it. Jenny inquired in a conversation, "Gee, I wonder how much detail these tests would show of a person."

Without asking her permission, John exclaimed: "Here, I will show you, and poked her skin in the arm to obtain some of her blood for a test." Before Jenny could process what had happened, he put her blood on a cell and began to look at it under a microscope. Jenny was horrified as John turned around and said, "You are not a woman!?" Jenny ran crying out of the room and left work that day. She did not show up to work for the next few days, sending only an email to her boss, saying she was not feeling well.

Before she could return to work, Creepy Lab sent her an email saying they needed her proper paperwork to be submitted for background information and proper payment. She was horrified. She had submitted the proper documents with her I9 when she first started. Jenny's documents had the name she used today, not her dead name and listed the gender she identified with, not what sex she was assigned at birth. Creepy Lab's email also stated failure to submit the proper paperwork would be grounds for termination.

What violations occurred here?

Creepy Lab discriminated against and harassed Jenny on the basis of her sex, gender, gender identity and gender expression. (Gov. Code, § 12940, subds. (a), (d) and (j).) By demanding documents with Jenny's sex assigned at birth, it violated the FEHA regulations. (Cal. Code Regs., tit. 2, § 1034 (i)(1).) By threatening her employment if not presented with those documents, Creepy Lab continued to discriminate against her by threatening to deny her employment based on her sex, gender, gender identity and/or gender expression. (Cal. Code Regs., tit. 2, § 11034 (i)(2).) Creepy Labs, vis-à-vis John, violated Jenny's FEHA rights by running the tests on her blood and detecting the presence of a genetic characteristic. (Gov. Code, § 12940, subd. (o).)

Our next case study

A Gender Nonconforming employee named Tamika is starting their first week with Too Intrusive School. Tamika will be addressed formally in the workplace due to it being a school. Tamika had worked in the district before but at another school, and since receiving credentials was transferred to Too Intrusive School. Upon their first day, Mr. Lee the school principal, met with Tamika

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and handed them their desk plate that stated "Ms. Johnson." Tamika handed it back to Mr. Lee and asked that it be corrected to say Mx. Johnson. Mr. Lee stated he did not understand what they were saying. He asked Tamika to spell it and they did. Mr. Lee agreed to have this fixed for Tamika.

Mr. Lee then took Tamika on a tour of the grounds. While walking through, Tamika noticed there were no gender-neutral restrooms, nor single stalls. They asked Mr. Lee about it. Mr. Lee said, yes, that is in the works. He further stated, for anyone who needs to, they can use my personal bathroom in my office. Tamika asked if that included the children who were transgender and nonconforming. Mr. Lee stated he had never thought about it beforehand but proclaimed, "Why not?" That bathroom was only accessible through his office. Upon completing the tour, Tamika noticed there were no posters hanging anywhere that advised of employee rights.

What violations occurred here?

This situation, one may say, was just a little behind the times, but there was no "ill" intent. However, the impact of not having an environment friendly to Gender Nonconforming and Transgender employees and children here is quite damaging to those persons. It is also illegal. It seemed that Mr. Lee was just completely ignorant about employee rights in general.

The lack of employee rights posters showed he and Too Intrusive School had no concept of various rights. Employers who qualify under the FEHA must have displayed the California Civil Rights Poster on Transgender Rights among numerous other posters. (Gov. Code § 12950, subds. (a)(3) and (b).) (https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/11/The-Rights-of-Employees-who-are-Transgender-or-Gender-Nonconforming-Fact-Sheet_ENG.pdf)

Next, there were no bathrooms that were gender neutral, whether single stall or not. The employer must allow the employee to use the bathroom they identify with at the time of the need and may have to establish methods for ensuring privacy in the workplace if they are not required to alter existing facilities. (Cal. Code Regs., tit. 2, § 11034 (e)(2) (A - C).) But for someone like Tamika Johnson, they may not feel comfortable using the "male" or "female" restrooms. This is why a gender-neutral bathroom is ideal. And especially one they would not have to wait until Mr. Lee is not in a session in his office to use.

Mr. Lee misgendered Tamika by handing them a name plate that contained "Ms." on it instead of asking how they wanted to be addressed. This violated the FEHA as it was discriminatory. (Gov. Code, § 12940(a) and (Cal. Code Regs., tit. 2, § 11034 (h)(3).) It should be noted that the use of Mx is also a way to leave behind introductions that denote ownership and are antiquated. Thankfully for Tamika, Mr. Lee offered to correct it immediately after being educated on the introduction Tamika preferred for their name plate. It is probably safe to say that Mr. Lee had not undergone sex-harassment training that is required every two years for a position in management and within the first days of employment. (Gov. Code, § 12950 et seq.)

Other important information about representing Transgender and Gender Nonconforming employees

They are entitled to use pronouns and introductions they prefer. It is best to use neutral pronouns, like they/them/their before the client advises of their preferred pronoun. It is also a great idea to simply ask in intake, is there a pronoun you would like us to use with you?

My office does that immediately when obtaining the contact information of a potential client. Good practice is to include your pronouns where you are identified, such as in your signature and your name on Zoom/Teams. This makes it a safer space for Transgender and Gender Nonconforming persons to add theirs as well.

Do not ask the Transgender or Gender Nonconforming employee what their dead name is. It is dead to them for a reason. They may tell you the name if it comes up as the reason for their call, say if they are being dead-named. If it is not obvious, "Dead Name" refers to the name assigned to them at birth that they no longer use. There may be certain circumstances where that name is utilized if paperwork does not match the current name, but the employee is still allowed to rightfully demand that their current name, known as the common law name be how they are referred to at work. This should go without saying, being Transgender and Gender Nonconforming is *not* a mental health condition. And under no circumstances should you encourage a client to come out to you or anyone else. A client may "pass" at this until they feel comfortable.

Thankfully, I have not had this happen, but if you have an opposing law firm that misgenders your client or treats them with any discrimination in your prosecution of their case, be mindful of California Rule of Professional Conduct, 8.4.1 and consider reporting them to the State Bar. This would also apply to judges; there is a special rule for them as well to prevent bias on the basis of sex, gender, gender identity and gender expression. (California Code of Judicial Ethics: Canon 3(B)(5).)

In a time when the president is intimidating companies to roll back DEI and his budget makes cuts to the suicide and crisis prevention hotline, 988, for LGBTQIA+, we as the legal community, need to do better in our service of this amazing community. (Daily Kos article dated 4/23/25, entitled "Trump's just fine with queer kids killing themselves" (https://www.dailykos.com/stories/2025/4/23/2318113/-Trump-s-

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just-fine-with-LGBTQ-kids-killing-themselves?detail=emailrecap)

If the proposed budget passes, this service would end in October. This leads me to the final point for all clients we represent, not just Transgender and Gender Nonconforming persons: Check in with your clients often. I rarely have a call with a client now. I try to do Zooms as much as possible with them.

See them, get to know them. You can then see if there are mental declines when representing them. Litigation is stressful on top of the issues they came to us with for their case. Make sure they know of their options for seeking help. We are considered counselors at law for a reason.

Final plea, I always say that lawyers are like shoes – we have to fit well and be comfortable. If you are not a good fit with a client regardless of their sex, gender, gender identity or gender expression, make sure they have resources. Great resources for this community include the Transgender Law Center, Lambda Legal, ACLU, and your local LGBTQIA+ centers may have more resources as well.


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