

Initiative for Gender Equity in the Public Sector
Research Translation Brief:

Beyond Binary Treatment of Gender in Public Administration and Policy

Handbook on Gender and Public Administration,

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In a Nutshell

- Historically, the public sector has had a tumultuous relationship with LGBTQ+ populations, by failing to protect or outright upholding the oppression of - individuals through internal public sector workplace policy and the enactment of public policy that “othered” many individuals who fall outside the male-female gender binary.
- At the federal level, steps have been taken to ensure equal rights for individuals who do not identify as heterosexual in the workplace and beyond.
 - In 2009, President Obama ordered agency heads to extend full spousal benefits to same-sex domestic partners of federal employees¹.
 - A 2013 Supreme Court decision found a provision of the Defense of Marriage Act that prohibited the federal government from recognizing same-sex marriages that were legal at the state level to be unconstitutional, allowing for spousal benefits to be extended to these federal employees and their children².
 - The “Don’t Ask, Don’t Tell” policy, which prevented openly gay men and women from serving in the military, was repealed by President Obama in 2011³.
 - In 2015, the Supreme Court ruled in *Obergefell v. Hodges* that states cannot ban same-sex marriage⁴.
 - *Bostock v. Clayton County*, decided in 2020 by the Supreme Court, held that Title VII of the Civil Rights Act of 1964 prohibiting discrimination on the basis of sex applies to lesbian, gay, bisexual, and transgender individuals⁵.
- Despite these gains, few federal agencies have addressed transgender employee issues through internal policy. Agencies at state and local levels have been comparatively slower to assume anti-discrimination policies, and these policies may also overlook the specific needs of transgender and transitioning individuals.

¹ Office of the Press Secretary. (2016). Fact sheet: Obama administration’s record and the LGBT community. Retrieved November 26, 2024, from <https://obamawhitehouse.archives.gov/the-press-office/2016/06/09/fact-sheet-obama-administrations-record-and-lgbt-community#:~:text=In%20June%202009%2C%20President%20Obama,Service%20sent%20to%20serve%20abroad>.

² *Ibid.*

³ *Ibid.*

⁴ *Obergefell v. Hodges*, 576 U.S. ____ (2015).

https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf.

⁵ *Bostock v. Clayton County*, 590 U.S. ____ (2020).

https://www.supremecourt.gov/opinions/17pdf/17-1618_hfc1.pdf.

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- Administrators of public agencies can further support and promote LGBTQ+ rights and protections by crafting policies to address issues of sex/gender expression, employee transitions, and organizational challenges. Such policies can benefit not only the employee but also other workers, supervisors, and the agency as a whole.

The Problem

There is a need to revise and update outdated policies that may marginalize individuals who do not fit historical sex and gender norms. Governments have made strides to extend equal rights in the workplace to LGBTQ+ individuals through executive orders, landmark court cases, and legislature. However, there is an emergent fluidity to sexual orientation and gender identity which has been overlooked in federal, state, and local policy and has contributed to uncertain organizational environments and the continued discrimination and harassment of transgender, nonbinary, and gender nonconforming individuals. Public administrators are key in dismantling oppressive anti-LGBTQ+ forces and can do so by constructing policies that are equitable and inclusive of all LGBTQ+ individuals employed and served.

New Insights for Addressing the Problem

- Some public sector diversity policies take minimal steps towards equality, such as allowing individuals to utilize a bathroom of his/her choice.
- Existing policies may not be consistently enforced, contributing to a cycle of discrimination and harassment.
- Sexual orientation has been increasingly included in classes of protected individuals, but gender identity has been left behind⁶ regarding workplace policy protections.
- Anti-discrimination policies may fail to adequately represent the needs of transgender and transitioning individuals.
 - In public workplaces, bathroom and locker room policies may fail to provide transgender employees who must change clothes or shower for work with adequate privacy and safety if designed. Dress code policies may be built on the male/female binary and not take into account the expression of gender-neutral identities. Additionally, workplace policies may not emphasize the need to use individuals' names and pronouns correctly following transition, or may have no language covering pronouns other than "she", "he", "her", or "him".
 - Public policies that offer "X" as a third gender option, may be inadvertently reducing all nonbinary identities to a single identity which can further "other" individuals who fall outside the male/female binary. Additionally, these public policies are not consistent across jurisdictions and may even contradict one another within jurisdictions, leading affected individuals to experience sustained concern, confusion, or even fear.

Why Are These Insights Important?

⁶ Elias, N.M. (2017). Constructing and implementing transgender policy for public administration. *Administration & Society*, 49(1), 20–47. <https://doi.org/10.1177/0095399716684888>.

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- Transgender employees face high levels of discrimination violence and harassment⁷; public agencies have been slow to address the needs of transgender employees through formal policy.
- Enhanced public policies can stave off conflicts and awkward situations in bathrooms and locker rooms, and can prevent a sex-based discrimination suit from failure to utilize a worker's correct name or pronouns.
- Policies can also educate coworkers and supervisors about what to expect during an employee's transition and may help coworkers and supervisors become more comfortable and supportive of workplace transitions. increase transgender employees' sense of security.
- Specific protocols can further educate and inform transgender individuals about their rights and where to go for assistance, which may increase a sense of safety and security.

What Should Decision Makers Do?

Federal policymakers should:

- The Office of Personnel Management should expand its definition of "transgender" to include nonbinary employees, and the revised definition should be communicated to other federal agencies.
- Each federal agency should create a set of transgender-relevant policies including, but not limited to:
 - Matters pertaining to employee transitions, such as name and pronouns;
 - Standards allowing employees to dress/groom consistent to varied gender identities, not just male/female; and
 - Bathroom and locker room use.

Public administrators should:

- Move beyond minimal actions such as promoting diversity and inclusion towards an effective diversity management program replete with programs, training, and organizational behaviors that include the unique contributions of all individuals within the organization.
- Implement policies inclusive of transgender employees which cover:
 - Provision of information regarding who to contact with policy questions or to obtain information;
 - Appointment of one individual to change all applicable gender records to ensure the agency and employee have clear information on protocol;
 - Promotion of safe environments for all, especially regarding bathroom and locker room use; and
 - Education of coworkers and supervisors of workplace needs and concerns of transgender individuals.
- Encourage communication between leadership and employees at every level of the organization.

⁷ Sears, B., Mallory, C., Lin, A., and Castleberry, N. M. (2024). Workplace experiences of transgender employees. *Williams Institute*.

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Workplace-Discrimination-Nov-2024.pdf>.

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- Critically examine and question whether current policies and practices uphold oppressive structures.

What Do We Still Need to Know?

Public administrators are obligated to attempt to right social wrongs⁸. LGBTQ+ individuals face many challenges when interacting with local, state, and federal governments. Other areas of concern include navigation of healthcare, interaction with police and detention, and immigration of transgender individuals from hostile countries to the U.S. What is also unknown is whether a change in federal leadership will reverse gains received by prior executive orders.

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⁸ Shields, P. M., and Elias, N. M. (Eds.) (2022). *Handbook on gender and public administration*, 103-114.