



Discrimination based on gender identity

Your rights
Your responsibilities

A guideline developed under The Human Rights Code

Introduction

The Manitoba Human Rights Commission (the “Commission”) is an independent agency of the Government of Manitoba responsible for administering The Human Rights Code (“The Code”).

The Code outlines a complaint process and mandates the Commission to educate the public about The Code and promote human rights principles. The Code has special status over all other laws of the Province of Manitoba.

Section 5 of The Code authorizes the Commission to prepare and distribute guidelines to assist in the understanding and application of The Code.

This guideline represents the Commission’s interpretation of The Code around discrimination based on gender identity at the time of publication. If there is any conflict between this guideline and The Code, The Code prevails.

Discrimination based on gender identity

The Commission interprets gender identity broadly to include the concept of gender expression.

Gender identity is a person's deeply felt internal and individual experience of gender. Gender refers to a system of classifying people, often based on their assigned sex. Gender identity is not restricted to classifying a person as "man" or "woman" and can include a broader spectrum of identities.

Gender expression is the way a person presents and communicates gender. Gender can be expressed through clothing, speech, body language, hairstyle, or voice. It is also expressed by emphasizing or de-emphasizing bodily characteristics or behaviours that are associated with masculinity and femininity. The ways in which gender is expressed are culturally specific and may change over time.

The division of gender into masculine or feminine is often referred to as a binary classification or the gender binary.

Gender identity should not be confused with, or considered part of, sexual orientation. A person's sexual orientation refers to the potential for emotional, intellectual, spiritual, intimate, romantic, and/or sexual interest in other people, often based on their sex and/or gender. This is also known as attraction and may form the basis for aspects of one's identity (e.g. gay, lesbian, bisexual, queer, asexual, heterosexual, etc.), and/or behaviour.

The Code prohibits discrimination and harassment based on a person's actual or perceived gender identity. The Code also prohibits retaliation against a person because they have tried to enforce their rights under The Code.

Discrimination may be directed towards one individual. A policy or practice may also systemically discriminate, meaning it discriminates against a group of persons on the basis of gender identity.

It is possible to discriminate without intending to violate the law. A policy or practice that seems neutral may have a greater negative effect on some people based on their gender identity, without justification or reasonable cause.

For example:

- a hospital's practice of assigning surgical patients to wards by grouping patients together by sex, regardless of their gender identity
- a public swimming facility that has male and female washrooms/changing facilities only
- a hotel's reservation system that requires guests to identify as male or female
- a license application that requires a person to choose an honorific from a list of "Mr.", "Mrs.", or "Ms" only

In each of these situations, there may be an unintended negative impact on individuals that results in discrimination against persons based on their gender identity, without any justification or reasonable cause.

Discrimination in the workplace

The Code prohibits discrimination in all aspects of full-time, part-time, permanent, casual or probationary employment and applies to paid and unpaid or volunteer employment.

Employers must at all times recognize the right of trans persons to be treated equally with respect and dignity in the workplace.

Employers may have bona fide or reasonable job requirements or qualifications that result in treating trans persons differently however those requirements must be carefully considered. The employer must be able to show that the requirement has been established in good faith and is reasonably necessary for the safe or efficient performance of the job.

Discrimination in the workplace based on gender identity typically looks like denying a person opportunities such as a job or promotion in part, because of their gender identity, or restricting access in the workplace to a person because of their gender identity.

It is difficult to conceive of jobs for which it would be justified to exclude or discriminate against a person on the basis of their gender identity.

For example:

- an employee is not hired or promoted, in part because of their gender identity or gender expression

In this situation, the person is discriminated against based on gender identity as long as gender identity was one of the considerations in the decision to not hire or promote the person, even though it may not have been the only consideration. If so, it is unlikely that discrimination can be justified.

Employers must be cautious and consider whether or not a policy, practice or rule has an unintended negative impact on trans persons. Employers should proactively identify and remove barriers in the workplace.

Employers have a duty to reasonably accommodate the needs of a person based on their gender identity, or any other protected characteristic.

The accommodation process is initiated by the employee and the request must be assessed on a case-by-case basis.

The employer has a responsibility to consider the specific request, ask for more information to substantiate the request if necessary, and assess what a reasonable offer of accommodation would look like.

For example:

- a trans employee requests access to a gender-neutral washroom for a specific period while they are transitioning or until they feel comfortable using the washroom that aligns with their gender identity
- a trans employee requests to immediately access the washroom that aligns with their gender identity
- an employee that identifies as gender non-binary requests to use a gender-neutral washroom

In each of these situations, it is unlikely that the employer would require further information to substantiate the employee's need based on gender identity. The employer would then need to consider whether or not it can provide the accommodation requested without undue hardship.

Employers must ensure a harassment-free work environment, which includes taking reasonable steps to terminate harassment if it is brought to the employer's attention, or the employer ought reasonably to be aware of the harassment.

For example:

- a trans employee complains that his co-workers have been referring to him by derogatory names and refusing to refer to him by male pronouns. The employer must investigate to determine if there is harassment and then take reasonable steps to address it and ensure it ceases.

Discrimination in housing

The Code prohibits discrimination with respect to leasing, renting or purchasing residential or commercial premises.

Landlords must at all times recognize the right of trans persons to be treated equally with respect and dignity.

Landlords may have bona fide or reasonable cause to treat people differently however those situations must be carefully considered. The landlord must be able to show that the seemingly discriminatory policy or practice has been established in good faith and is reasonably necessary for the safe or efficient operation of the premises.

Discrimination in housing based on gender identity typically involves not renting to a person wholly or in part because of their gender identity, not maintaining premises in part because of the tenant's gender identity, or evicting a person in part because of their gender identity.

It is difficult to conceive of a situation in housing in which it would be justified to exclude or discriminate against a person on the basis of their gender identity.

For example:

- a tenant's lease is not renewed because they identify as gender non-binary as do many of their friends who frequently visit the unit

In this situation, the trans person is discriminated against based on gender identity as long as gender identity was one of the considerations in the decision to not renew their lease, even though it may not have been the only consideration. If so, it is unlikely that discrimination can be justified.

Landlords must be cautious and consider whether or not a policy, practice or rule has an unintended negative impact on trans persons, such as requiring applicants to identify as

male or female. Landlords should proactively identify and remove barriers.

Landlords and condominium corporations have a duty to reasonably accommodate the needs of a person based on their gender identity, or any other protected characteristic.

The accommodation process is initiated by the trans person and the request must be assessed on a case-by-case basis.

The landlord or condominium corporation has a responsibility to consider the specific request, ask for more information to substantiate it if necessary and assess what a reasonable offer of accommodation would look like.

For example:

- a trans tenant requests that their name be changed on the building directory even though they have not yet legally changed their name.

In this situation, it is unlikely that the landlord would require further information to substantiate the tenant's need based on gender identity. It is unlikely that the landlord could show that it would cause an undue hardship to provide the accommodation requested.

Landlords ensure that their buildings are harassment-free, which includes taking reasonable steps to terminate harassment if it is brought to the landlord's attention, or the landlord ought reasonably to have been aware of the harassment.

For example:

- a trans unit holder complains that every time they use the shared laundry facilities other unit holders make derogatory comments towards him and comment on his clothing being washed. The landlord must investigate to determine if there is harassment and then take reasonable steps to address it and ensure this behaviour ceases.

Discrimination in services

The Code prohibits discrimination with respect to any service, accommodation, facility, benefit or program available or accessible to the public or to a section of the public, such as stores, theatres, restaurants, police services, sports associations, healthcare services, government services, food banks, schools, rehabilitation programs and insurance services.

Service providers must at all times recognize the right of trans persons to be treated equally with respect and dignity.

Service providers may have bona fide or reasonable cause to treat people differently however those situations must be carefully considered. A service provider must be able to show that a seemingly discriminatory policy or practice has been established in good faith and is reasonably necessary for the safe or efficient operation of the service being provided.

It is difficult to conceive of situations in which it would be justified to exclude or discriminate against a person on the basis of their gender identity.

Discrimination in services on the basis of gender identity typically involves requiring a person to state their gender identity when it is not necessary or disclosing information about a person's gender identity when it is not necessary or without consent.

For example:

- an online restaurant reservation service requires a person to identify as "male" or "female" when booking a table.

In this situation, the restaurant may attempt to justify the requirement to state gender identity assists in seating patrons but this is not likely to be a reasonable justification.

Service providers must be cautious and consider whether or not a policy, practice or rule has an unintended negative impact on trans persons. Service providers should proactively identify and remove barriers.

Service providers have a duty to reasonably accommodate the needs of a person based on their gender identity, or any other protected characteristic.

The accommodation process is initiated by the trans person and the request must be assessed on a case-by-case basis.

The service provider has a responsibility to consider the specific request, ask for more information to substantiate it if necessary, and assess what a reasonable offer of accommodation would look like.

For example:

- a trans student may request that her teachers and peers refer to her by a name that is not her legal name
- a trans patient whose legal first name does not accord with their gender identity requests a medical clinic to stop calling out patients' names as they appear on their Manitoba Health registration card

In these situations, it is unlikely that the service provider would require further information to substantiate the person's need based on gender identity. The service provider would have to show that it would cause an undue hardship to provide the accommodation requested and then consider other options to accommodate the request.

Service providers must ensure that persons are not harassed in the course of accessing their services, and must take reasonable steps to terminate harassment if it is brought to the service provider's attention, or the service provider ought reasonably to have been aware of the harassment.

For example:

- a trans person complains to a pool facility that one of the front desk staff loudly announces for those in the waiting room that the pool created a gender neutral washroom for him and what that cost taxpayers, whenever she sees him approach the entrance. The service provider must investigate to determine if there is harassment and then take reasonable steps to address it and ensure this behaviour ceases.

Creating a gender inclusive environment

Working proactively to ensure equality means thinking ahead and feeling comfortable with the rights and responsibilities in The Code.

Employers, landlords and service providers should carefully consider their policies and practices to ensure that there is enough flexibility to ensure the rights and dignity of all staff, employees, tenants and patrons. This means considering whether a policy or practice denies or limits a person's access to opportunities or benefits because of their gender identity or demeans and isolates a person on the basis of their gender identity.

1. The first step in ensuring equality is to examine policies and practices to identify barriers based on gender identity.
2. The second step in ensuring equality is to establish a process to assess and respond to request for accommodation whether on the basis of gender identity or some other protected characteristic.

Although issues often arise around access to gender specific washrooms or change rooms or to gender-neutral facilities, there are many other ways in which trans persons may feel discriminated against.

Language changes over time to reflect today's society, so using the appropriate terminology can be a means of ensuring respect and inclusivity. Terminology throughout the gender spectrum has been evolving and changing.

The following terms are not intended to be exhaustive but may be useful in understanding and developing policies or practices to ensure equality and uphold your responsibilities under The Code:

Cisgender refers to a person whose gender identity aligns with conventional social expectations for the sex assigned to them at birth. For example, a cisgender man is someone who identifies as a man and who was assigned male sex at birth.

Sex / Assigned Sex is the classification of a person as male, female or intersex based on biological attributes, such as external genitalia, reproductive organs, chromosomes and hormones. Generally, individuals are assigned a sex at birth by a medical professional, often on the basis of their external genitalia.

Sex / Gender Binary is the notion that there are only two possible sexes (male/female) and genders (man/woman), that they are opposite, distinct and uniform categories, and that they naturally align as male/man and female/woman (in other words, that gender is determined by sex).

Transgender or Trans refers to a person who does not identify either fully or in part with the gender conventionally associated with the sex assigned to them at birth. Transgender (or trans) is often used as an umbrella term to represent a wide range of gender identities and expressions (e.g., a person assigned male at birth who expresses femininity and identifies as a woman, a person who identifies as gender queer or gender fluid).

Transsexual refers to a person who does not identify with the gender conventionally associated with the sex assigned to them at birth. Many transsexual people feel a strong need to access medical transition to physically alter their bodies (e.g., hormone therapies and/or gender affirming surgeries).

Two Spirit is an umbrella term that represents the many words used in Indigenous languages to refer to the interrelatedness gender, sexuality, community, culture and spirituality. Some Indigenous people identify as Two Spirit rather than, or in addition to, identifying as LGBTQ.



Need more information?

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Le présent guide est également disponible en français.