

PUBLICATION

Call Me By My Preferred Name and Pronoun – Ways to Create a More Inclusive Environment for Transgender Individuals

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Our last edition contained a review of *A Quick & Easy Guide to They/Them Pronouns* by Archie Bongiovanni and Tristan Jimerson. As my colleagues noted, this book is very helpful in better understanding the journey of an individual who is misgendered, including use of an apt analogy of carrying a backpack that gets heavier as the day goes along. To alleviate the backpack's weight, companies should recognize the effects of misgendering an individual, the legal ramifications of doing so in the workplace, and best practices to become an ally to the transgender workforce.

Effects of Misgendering an Individual

Misgendering occurs when someone intentionally or unintentionally refers to a person or uses language to describe a person that does not align with their affirmed gender, for example, referring to someone by a specific gender when speaking to them over the phone based upon voice only. It comes as no surprise that misgendering can have negative consequences for a transgender person's confidence and mental health. In the workplace, the experience of being misgendered can be hurtful, angering, and even distracting. The experience of accidentally misgendering someone can be embarrassing for both parties, create tension, and lead to communication breakdowns.

Recent Legal Updates Surrounding Transgender Individuals

On June 15, 2021, a year after the landmark *Bostock* decision, the EEOC issued a [technical assistance guidance](#) establishing its legal positions on LGBTQ+-related matters involving employment discrimination based on sexual orientation and gender identity. Some key takeaways from the EEOC's Guidance include:

- An employer covered under Title VII cannot fire, refuse to hire, or take assignments away from someone because customers or clients would prefer to work with people who have a different sexual orientation or gender identity. Employers also are not allowed to segregate employees based on actual or perceived customer preferences.
- The use of pronouns or names that are inconsistent with an individual's gender identity could be considered harassment. While accidental misuse of a transgender employee's preferred name and pronouns does not violate Title VII, intentionally and repeatedly using the wrong name and pronouns could.

Approximately a month after the EEOC released its guidance, an Indiana federal court ruled against a former teacher who claimed to have been forced to resign after refusing to call transgender students by their chosen names and pronouns. *Kluge v. Brownsburg Community Sch. Corp.*, 2021 WL 2915023 (S.D. Ind. July 12, 2021). To foster a more inclusive environment for its transgender students, the school district adopted a policy that required all staff to refer to students by their chosen names as listed in the school records. Citing religious beliefs, the teacher refused to honor the policy and sued the school district, alleging that the school discriminated against him by refusing to accommodate his sincerely held religious beliefs. The court noted that the teacher's religious opposition to transgenderism was directly at odds with the school's policy of respect for transgender students, which is grounded in supporting and affirming those students. Of significance, the court noted that continuing to allow the teacher an accommodation that resulted in complaints that transgender

students felt targeted and dehumanized could potentially have subjected the school to a Title IX discrimination lawsuit. This increased risk of liability constituted an undue hardship that Title VII does not require the school to bear.

Best Practices

For readers wondering how companies can serve as allies to their transgender workforces and customers, here are a few suggestions:

- Educate. There are free resources available from organizations such as [Stonewall](#) and [HRC](#). You may also read books involving the LGBTQ+ community like *A Quick & Easy Guide to They/Them Pronouns*.
- Review company policies and form administrative documents (such as offer letters and dress codes) to remove gender-specific language and ensure that you are not making assumptions about a client, candidate, or employee's gender.
- Ask or provide opportunities for disclosure of preferred names and pronouns during the interview and onboarding process. Use these responses as a basis of introducing new employees.
- Create policies that allow inclusion of personal pronouns in email signature lines.
- Revise non-discrimination and anti-harassment policies to include gender expression.
- Train your managers and leaders on inclusive strategies focused on transgender and gender non-conforming education.

Allowing transgender individuals to feel welcomed and supported in the workplace can relieve some of the weight of the "backpack" they may carry daily. For more best practices your company can take to create a more inclusive work environment for all employees, contact the author or any member of Baker Donelson's Labor & Employment Team.

Baker Donelson's Commitment to Creating a More Inclusive Work Environment for Transgender and Gender-Nonconforming Employees

It is an important best practice to frequently evaluate company policies and practices to ensure they align with and reflect core values. Baker Donelson's commitment to diversity, equality, equity, and inclusion has led us to review our policies and practices to ensure they advance LGBTQ+ equality and equity.

As a matter of respect for our clients and colleagues, their families, and the communities we serve, for nearly a year, our Diversity Committee, [BakerPride](#), HR team, and general counsel, along with a volunteer group of staff and attorneys, have been actively evaluating and implementing numerous strategies to address the needs of our transgender and gender-nonconforming employees. This includes actively implementing many of the best practices mentioned above.

Baker Donelson is engaged and committed to identifying innovative and meaningful ways to ensure we continue to build a more inclusive and equitable workplace with the best representation of ideas and experiences. It is the diversity of ideas and experience that allows us to provide our clients the best, most creative and innovative work product and solutions. Focusing on DE&I for all employees allows our Firm to move closer to our goal to be a best-run business.