

SUPPORTING GENDER AFFIRMATION: TOWARDS TRANSGENDER+ INCLUSIVE WORKPLACES IN INDIA

Dedicated to Anannya Krishnan

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Credits:

We would like to thank members and allies of the transgender+ community who helped review the guide and provided their feedback.

Additional Information:

Please get in touch with Diversity Dialogues (dialogues.diversity@gmail.com) and Orinam (orinam.net@gmail.com) for additional information or guidance on developing and implementing transgender-inclusive policies.

Introduction

Individuals who are transgender, intersex, bi-gender, agender, non-binary or genderqueer (henceforth transgender+) constitute a competent and skilled talent pool in today's competitive marketplace.

Many workplaces in India are already likely to have transgender individuals working with them. These individuals, who may have been recruited through mainstream recruitment channels and are actively contributing to the business, may not openly identify as transgender+ and are perhaps living and expressing in the gender assigned at birth, and are forced to pass as cis. Some others may be transgender and living in stealth, i.e. in their preferred gender(s), without disclosing their gender assigned at birth.

Organizations committed to diversity and inclusion need to create a safe, welcoming and inclusive environment for transgender employees, both existing employees and new recruits, to be recognized in their gender, and create channels for requesting support if and when required. Affirming the gender of transgender employees, with respect to inclusive policies and benefits, is an essential part of creating such an inclusive environment.

Readers interested in the broader business case for LGBTQIA+ inclusion and steps for Indian companies to become inclusive are referred to the publication LGBTQIA+ inclusion at the workplace and related online resources on Orinam. For a global North perspective, see the 'Trans Toolkit for Employers' by the Human Rights Campaign Foundation, USA.

This publication focuses on approaches to make workplaces inclusive of transgender+ persons in ways that affirm their gender identities. It would apply primarily to individuals who possess the requisite formal education and skills, and are, or can be, recruited through mainstream hiring practices and evaluative procedures.

For marginalized transgender communities such as hijras, thirunangais and working class trans men, who lack formal education or skills for mainstream employment, there would need to be additional affirmative actions for skilling, placement and retention. This would be the subject of a future publication.

Policies for a Transgender+ Friendly Workplace

I. Safety and Protection

It is important that equal opportunity, anti-discrimination and anti-harassment policies formally acknowledge gender identity and gender expression. This basically means a transgender+ person cannot be denied employment or promotions, or be fired or harassed on the grounds of being transgender+, and that there is a company-produced released document that makes this explicit.

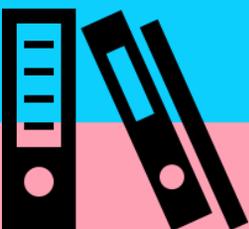
II. Gender-neutral Policies and Communication

General policies applying to all employees should be gender-neutral as far as possible. It should use the word "Employee" or "Person" and use pronouns "they". The language in the official communications should ideally also be gender-neutral and not restricted to the gender binary. Remember She or he is not gender-neutral as it excludes non-binary, agender and transgender persons.

III. Transgender+ Inclusive Recruitment Practices

a. Ensure that every job opportunity listed has a gender-neutral job description, preferably using they pronouns instead of she or he. If an equal opportunity statement is mentioned, it should acknowledge gender identity and gender expression as part of it along with other dimensions.

b. Ensure that the name and gender options on the recruitment forms are inclusive. Ideally, there should be options to provide self-identified names and gender pronouns, apart from legal name and legal gender. The legal name should only be used for official records (confidential), while authentic names and pronouns should be used for all communication with the candidate. Note: Legal gender options should include "Transgender" as well. Government identification documentation such as Passport, Voter ID, PAN, Aadhar etc. allow individuals to legally identify as transgender.



c. Ensure that interviewers have undertaken sensitivity training on bias-free hiring techniques (both conscious and unconscious). Ensure that all extended staff who interact with incoming candidates, such as security, reception, coordinators, consultants are sensitized.

d. Allow candidates to present documentation with name and gender assigned at birth, or a combination of their current legal name and their name assigned at birth. In such cases, it is acceptable to validate that both belong to the same person by asking for additional proof, such as legal name change affidavit etc. However, mandating that a surgery is required, or asking for documentation proof of surgery or hormone therapy, is not acceptable, and would be in violation of the Supreme Court's NALSA (2014) ruling on transgender rights. Remember not all transgender+ persons go through medical or surgical procedures to affirm their identity.

e. Ensure that candidates are not made to feel uncomfortable by reactions of interviewers or other staff to their gender expression. Interviewers and others interacting with the candidate should not pay unnecessary attention to the candidate, especially if the candidate's gender expression is perceived as being non-binary or non-cis-passing. Micro-aggressions such as laughing in ridicule, staring continuously, or completely avoiding eye contact are unacceptable. It is recommended that interviewer does not initiate discussion with the candidate on their being transgender or non-binary. They should let the candidate bring up the aspect, if at all they wish to do so.

f. If the company has already done work around LGBTQIA+ inclusion, and/or has employees who are open about their (trans)gender identity, you could feature them or their stories on recruitment channels.

g. Placing visible symbols of LGBTQIA+ inclusion or transgender inclusion around the interview spaces that candidates visit (pride flags, mugs, coasters, posters etc.). However, be sure to walk the talk.

h. Do not ask a transgender candidate intrusive questions about their body, their surgeries, their plans for surgeries, or their sexual activities.



Interviewers can however demonstrate their inclusive behavior to the candidate in subtle ways. This should however be done for all candidates, not just because of the physical appearance or mannerisms of specific candidates. Examples of inclusive behavior:

- Ask the candidate for the pronouns that they would be liked to be addressed with (if this option is provided in the application forms, use the pronouns as mentioned by the candidate).*
- If you need to make a third-person reference to the candidate, use the pronoun they. Continue using they until the candidate states a binary gender identity .*
- Generally speaking about the organization's inclusive practices across all dimensions of inclusion, including LGBTQIA+. Do not seem to imply that you are talking about it because you suspect that the candidate is transgender+.*

IV. Names and Pronouns

At the workplace, transgender+ employees should be referred to by the names and pronouns that affirm their identities, irrespective of their legal name. It would be ideal if the employee directory allows employees to change the names by which they would like to be addressed. This is also useful in a multi-cultural scenario for cisgender persons where nicknames may be preferred to avoid having legal names be mispronounced by global teams.

It is understandable that the legally assigned name and gender may still apply in matters such as employee records, pay slips, income tax forms etc., until such time these are officially changed.



V. Attire and Washroom Use

Employees should be allowed to dress in conformance with their gender identity and expression, within the purview of the existing dress code for all employees. Similarly, employees should be allowed to use the washroom that corresponds with their gender identity/expression and safety needs. A gender-neutral washroom can additionally be provided; however, it should not be mandated for transgender employees to use it. The NALSA ruling asks that separate washrooms be designated in public spaces, and some advocacy groups in the country have been raising this demand. However, the combination of gender-neutral washrooms and binary gendered washrooms that individuals can use, regardless of whether they are cis or trans, would be best.

VI. Sensitization and Awareness Training

Most organizations today have training modules on work ethics, gender diversity, prevention of sexual harassment. These training materials should acknowledge/include relevant aspects of transgender+ identities. There should also be periodic awareness and sensitization sessions conducted for all employees, especially managers. The training must also be made mandatory for extended workforce such as service staff (security, facilities, cafeteria, reception), contract labor etc.

VII. Inclusive Health Insurance that covers Gender Affirmation

Companies can work with their insurers to design a corporate health insurance plan that covers gender affirmation surgeries or procedures as per international standards of care such as WPATH. A few companies in India are already providing this benefit as part of their health benefits.

Do refer to the Diversity Dialogues video on Equal benefits to the LGBTQIA+ workforce: <https://www.youtube.com/watch?v=JwP2VgqzBQ>

Family benefits must be inclusive to include self-identified family/dependents, and not just biological families or legal spouses. For more details on implementing these benefits, please consult Appendix A.



VIII. Support for Employees who are Transitioning

A critical aspect of transgender+ inclusion is for the employing organization to provide support during the life-stage (or multiple life-stages) during which an employee decides to go through a transition to affirm their gender. Remember that this transition may or may not be accompanied by medical or surgical interventions such as hormone therapy or gender affirmation surgery, formerly called sexual reassignment surgery.

For example, a transman who is assigned female at birth, would transition when he starts expressing himself in attire perceived to be male, uses a male name, and male pronouns. His transition may not involve any immediate medical procedure.

Since each individual transgender person's experiences are different, the level and nature of support they may need will differ. Therefore, there cannot be a one-size-fits-all policy, only guidelines as to what kind of support can be availed, if the employee wishes to go through such affirmation.

Remember the employee should be kept at the center of this process, and they should consent to every step forward in their transition.

IX. Additional Information

Feel free to get in touch with Diversity Dialogues (dialogues.diversity@gmail.com) and Orinam (orinam.net@gmail.com) for additional information or guidance on developing and implementing transgender-inclusive policies.



Guidelines that may be instituted as part of gender affirmation support to a transitioning employee

- A Human Resource contact person may be designated for support in matters of gender affirmation and transition. This person guides the employee through the process. This contact should be prominently listed in policy web pages, LGBT+ resources, employee directory etc.
- The same person could serve as case manager who tracks all the transitions going on in the company (only with consent of the respective employees). Given that this process can take many years for some people, it is good to check in as per the employee's wishes to ensure that the employee is getting the support they need, even up to a few months after their transition. Needless to say, this data must be maintained with the strictest privacy guidelines and must be destroyed on request, and when the employee leaves the organization.
- Clearly documented roles and responsibilities of all parties involved – the individual, their manager and HR business partner – are needed.
- Training modules for managers and HR partners specifically about supporting an employee through their transition, do-s and don't-s etc.
- Support and resources for making systemic changes to name and gender pronouns in employee listings, legal name and gender updates in the HR systems, email ID changes, etc.
- Guidance on the process of communicating the employee's transition to the rest of the co-workers and external entities in a customer-facing roles. This should be as per the employee's timelines and wishes. Some prefer communicating it themselves; others may prefer that their manager or HR communicate it more formally.
- In case medical procedures that require hospitalization and recovery time is involved, the employee may require medical leaves. Ideally, this should be allocated as per the existing short-term/long-term medical leave policy, just as would be the case for a heart surgery, for example.
- The organization should ensure that only essential documentation is sought from the employee, and that the personnel handling the approvals are sensitized on such medical procedures. Note that there may be multiple leave requests as part of affirmation. Alternatively, the organization could develop a separate leave policy for gender-affirming medical procedures, as long as it is equivalent to or better than the regular medical leave policy.
- Establish a formal or informal restricted resource group of transgender+ employees to network and provide peer-support if feasible. This group can also help the HR streamline processes better, and provide feedback on content for training modules etc. This could be within the umbrella of the existing LGBTQIA+ resource group for an organization that has recently started their LGBTQIA+ inclusion journey. For mature organizations this could be an exclusive closed group of transgender+ individuals.
- Provide scope for reasonable accommodation beyond the above guidelines. Some employees might need additional financial assistance, housing assistance, work relocation, flexible work options etc. Depending on the sensitivity of the individual case, and subject to business unit approvals, these accommodations may be approved for specific employees. The inability to provide such accommodations should be communicated clearly.

Appendix A:

Strategies for Implementing Benefits

- Do not go around actively seeking insurers who provide this policy in the market. It is best to start with your existing insurer. The rapport between the company and the insurance provider is the key to make transgender benefits a reality.
- The compensation and benefits team should be convinced and committed to make this happen (requires buy-in of HR, leadership, and finance). These items are best included during contract re-negotiation for best leverage with the insurer.
- Do not dwell too much on “number of people who will use this benefit”. Negotiation with the insurer should be on the premise that benefits for LGBTQIA+ are important items to be included, irrespective of the number of people who will avail it.
- Explore workarounds such as internal reimbursement only if all negotiations fail.
- Be aware of the guidelines from the Insurance Regulatory and Development Authority of India (IRDAI, formerly IRDA), and use them to strengthen your case:
- IRDAI specifies standard procedures for inclusion, and excludes certain items especially when it comes to critical illnesses. The exclusion does not mean that insurers cannot necessarily cover it. It just means that it is not part of the standard policy that all insurers need to follow.

Two versions of the guidelines are of significance: 2013 and 2016

2013 version:

<http://www.policyholder.gov.in/uploads/CEDocuments/Guidelines%20on%20Standardization%20in%20Health%20Insurance.pdf>

It clearly acknowledges the following line "The standard listing of excluded items, an area which has otherwise been fairly variable in its interpretation and implementation, has been finalized. The same is annexed at Annexure IV. However, Insurers may include these exclusions, if the product design allows for, or if the insurer wants to include these as part of hospitalization expenses."



2016 version:

<https://www.irdai.gov.in/ADMINCMS/cms/Uploadedfiles/Guidelines%20on%20Standardization%20in%20Health%20Insurance%202016.pdf>

The 2016 update mentions "Insurers, however, may endeavour to cover all or some of these items or design add-ons or optional covers for them. Such generally excluded items which may be covered by insurers are mentioned in Annexure I of these Guidelines."

Some of the items in the Annexure list are:

- Infertility/ Subfertility/ Assisted Conception Procedure
- Psychiatric and Psychosomatic Disorder
- Dental Treatment Expenses That Do Not Require Hospitalisation
- Treatment Of Sexually Transmitted Diseases
- Aesthetic Treatment / Surgery
- Hormone Replacement Therapy

The 2013 version has the following comment next to these items: "Exclusion in policy unless otherwise specified". The 2016 version reads: "the list is accompanied by the annotation Items for which optional cover may be offered by insurers". Both these statements suggest that insurers can go beyond the standard norm to make additions to the cover.

Many organizations have started covering Annexure list items such as in-vitro fertilization, psychiatric care and dental treatments in their health plans. Inclusive employers should explore the potential for covering other items on the list such as hormone therapy, gender affirming surgeries, and treatment for HIV/other STDs.



Appendix B:

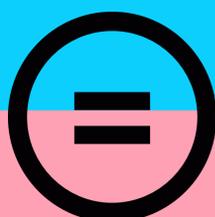
Listing of Transgender+ inclusive Employers in India: Call to Participate

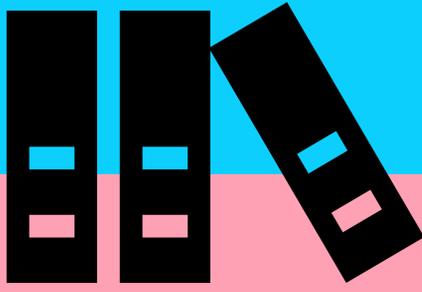
Orinam.net and Diversity Dialogues are curating a crowd-sourced directory of employers in India who are known to be transgender, intersex, non-binary or genderqueer (henceforth transgender+) friendly and inclusive. This list of employers will be published on Orinam.net accompanied with a resource guide for employers on building a transgender+ inclusion framework. The NAME/IDENTITY of the submitters will be kept CONFIDENTIAL and not published. We hope this directory will help the larger transgender+ communities explore options for inclusive employment, help them/us make better life and career choices, know where to reach out for support, or just understand how trans+ people can affirm and be ourselves without compromising our careers.

<http://orinam.net/trans-employer-survey>

The results of the survey are published and updated on the following page. Please reach out if you need additional details:

<http://orinam.net/list-of-transgender-plus-inclusive-employers-india/>





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