# TRANS WORKPLACE PROTECTIONS

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iscrimination based on gender identity or expression is a form of sex discrimination. Gender is a category protected by federal law,

just like race, religion or disability. Even if your state has no law protecting trans workplace rights, federal law protects you.

## HARASSMENT

A legal definition of gender-based harassment is "offensive verbal, visual, or physical conduct that is severe or pervasive and affects working conditions or creates a hostile work environment because of gender." An employer is responsible to take prompt and effective action to stop such conduct, but only if it is aware of the situation. Communicating the problem to your employer is a key step in resolving such harassment.

### What types of conduct constitute harassment?

Harassment includes many types of conduct, such as oral or written comments about a person's body or clothing; comments about gender non- conforming people; sex-based jokes or chat; viewing or posting pornographic material at work; sexual innuendos; physical touching; blocking movement; ogling, leering or laughing; or demeaning gestures or facial expressions. This may include supervisors, co- workers, subordinates, customers, vendors or subcontractors.

## DISCRIMINATION

Discrimination includes most negative job actions, such as demotion, suspension without pay, termination, or refusal to hire or promote, because of gender. Most employers give some non-discriminatory reason, and it is important to show the explanation is a pretext for discrimination. Examples of proof of pretext include statements by the decision-maker that reference gender, co-workers treated more leniently, or failure to follow company policy.

## RETALIATION

Retaliation means you were treated in a way that would discourage future complaints because of reporting harassment or discrimination. Reporting includes oral or written complaints to a manager, HR or a government agency, opposing discrimination against another, or participating in an investigation of harassment or discrimination.

**5 SIMPLE ACTIONS TO TAKE**

Talk to an employment lawyer. Many lawyers do not charge for a consultation, and will take a case on contingency, meaning that legal fees are taken as a percentage of any amount recovered. If there is no amount recovered, you pay no legal fees. Keep in mind that this brochure is not legal advice, which can only be given by an attorney admitted to practice law in your state after review of all facts and circumstances. The law must be applied to the facts of your particular case, in the context of legal rules and court decisions. A conversation with an employment lawyer can help you understand what

actions are likely to be helpful or hurtful to you.

### Report the conduct to HR.

Your report has two important effects. It gives your employer an opportunity to address the problem, and if the problem continues, you have proof that your employer knew about the problem. While this is a key step in protecting your rights, keep in mind that speaking up can result in more harassment, discrimination or retaliation. Although your speaking up is protected by law, the law is not a perfect shield. On the flip side, retaliation for reporting is illegal, and sometimes easier to prove than the actual harassment or discrimination. If the employer then takes any adverse employment action against you because of your reporting, you likely have a viable retaliation claim. Specifically include a request for confidentiality in your report, except to the extent necessary to investigate, but don't assume they will do it. They may report your complaint to their supervisors and to other managerial employees.

### Keep careful notes of what happened, but not on employer-owned equipment or social media.

Take notes of what happened and name of witnesses with dates. Don’t include personal thoughts you don’t want others to see. Keep any notes, memos, letters, write-ups, or other tangible evidence, so long as they are not confidential company property. Recording conversations without consent may or may not be legal in your state or under employer workplace rules. Your communications using company equipment or social media are not confidential and can be used against you.

### Request a reasonable accommodation.

Gender dysphoria is a recognized medical condition. While some trans people prefer not to

see it as a disability, the law may protect it as such. If appropriate, specifically noting a medical condition in writing as a disability and requesting a reasonable accommodation may provide additional protection. Reasonable accommodation may include change in shift, change in job duties, time off, closer monitoring of a harasser or other ways of addressing the problem.

### Don't quit your job without legal advice.

Quitting enables the employer to argue you didn't give it time to fix the problem, could affect your ability to recover lost income, and make it harder to collect unemployment benefits. To recover damages, you may also have to prove that the conditions were so intolerable that any reasonable person would have to quit, a difficult standard to meet. Quitting may be appropriate, but check with a lawyer first.


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Jillian has been practicing law since 1986. She is admitted to the bars of New York and New Jersey. She is also Professor of Law and Society at Ramapo College.

Jillian has represented clients in cases across the country, as the United States Equal Opportunity Commission permits out-of-state attorneys to represent clients anywhere in the U.S. Federal courts also permit *“pro hac vice”* representation by out-of- state attorneys with permission in appropriate cases.

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