

4 December 2020

Employment – 20:20 vision

Providing clarity and insight on employment law matters

Individuals who identify as non-binary and gender fluid now covered under the Equality Act 2010 for gender reassignment purposes



Following a recent Employment Tribunal judgment on the inclusion of non-binary and gender fluid gender identities under the Equality Act 2010, we look at what practical steps employers should be taking in light of this decision.

The Employment Tribunal ruled in [Taylor v Jaguar Land Rover Limited](#) that the definition of gender reassignment under the Equality Act 2010 covers employees who identify as non-binary and gender fluid. The Claimant, Ms Taylor, suffered limited to no support from managerial teams regarding her transition in the workplace and the insults and abusive jokes she was experiencing. Ms Taylor successfully claimed direct discrimination, harassment and victimisation on the grounds of gender reassignment.

For businesses, it is important that employment practices are not only updated in line with today's standards around equality and inclusion but are also actively brought to the attention of their workforce, with consistent and substantive training provided. The Judge's comments and award of aggravated damages (which are seldom awarded, and only where the behaviour of one party is aggressive, malicious or oppressive) are particularly noteworthy given JLR was found to have produced diversity and inclusion policies, but had not taken any active steps to bring them to their workforce's attention.

Practical steps for employers

Specific steps employers can take to demonstrate best practice:

- Diversity and inclusion training to staff of all levels;
- Review anti-bullying policies to ensure they are fit for purpose;
- Ensure there are robust equal opportunities and specific gender identity policies – these should use a supportive and flexible approach;
- Look out for and seek to avoid more subtle forms of discrimination by employees – such as subconscious or unconscious bias. Provide training to avoid this;
- If some of the workforce are less well versed on these issues, now is the time to (i) ensure they are trained and (ii) ensure they do not voice unhelpful opinions;
- Ensure that a gender neutral pronoun is an option for employees to use;
- Review how data is managed – speak with the relevant employees to plan how their information should be updated;
- Assess any practical or logistical barriers – for example, is there a need for gender neutral toilets (the fact that JLR had not carried out an analysis was raised by the Claimant in her claim and accepted as discriminatory by the Tribunal)?
- Are employees required to wear uniforms – and, if so, is there a gender neutral option?
- Explore having bespoke training delivered to both your HR team and wider workforce.

If you have any questions or require assistance with drafting or reviewing relevant policies please get in touch with the authors below or your usual Stephenson Harwood contact.

This is an excerpt taken from longer article written by Adam Cooke of Stephenson Harwood and Oscar Davies of Lamb Chambers which can be found [here](#).

Contact us



Anne Pritam

Partner

T: +44 20 7809 2925

Email: [Anne](#)



Adam Cooke

Associate

T: +44 20 7809 2796

Email: [Adam](#)