

**INCLUSION OF  
TRANSGENDER  
PEOPLE  
IN THE WORKPLACE**

INFORM, SUPPORT AND KNOW THE  
LUXEMBOURG LEGAL FRAMEWORK

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## Foreword from the Minister

Diversity is both a strength and a source of wealth for all businesses. Including and respecting each and every individual as well as their gender identity is key to ensuring their well-being and professional development in a company.

Transgender people may face particular challenges in the workplace. Offensive behaviour and discriminatory acts can have a negative impact on their well-being as well as on their participation in the labour market. To allow these talents to shine, it is important to respect their identity and enable them to thrive on a daily basis.

This guide was developed to support transgender people and their employers in the workplace, which is one of the objectives of the National Action Plan for the promotion of the rights of lesbian, gay, bisexual, transgender and intersex people. Let's take some time to understand the challenges related to transidentity, to deconstruct our prejudices, and to be inspired by the best practices and advice contained in this guide.

As the Patron of the Diversity Charter Lëtzebuerg, I warmly invite all companies to continue their day-to-day commitment to diversity, in a cross-sectional manner and at all levels. Together, we are building a diverse and inclusive work environment!

**Corinne Cahen**

*Minister for Family Affairs and Integration  
Patron of the Diversity Charter Lëtzebuerg*



## 2. Introduction

Following the 2019 survey carried out by the European Union Agency for Fundamental Rights (FRA), the report entitled “A long way to go for LGBTI equality” asked respondents whether they felt discriminated against at work. Among transgender respondents, a rather high proportion declared that indeed they had felt discriminated against during the 12 months preceding the survey (35%)<sup>1</sup>.

Because of the structural problems facing transgender people across the business world, most of them are confronted with numerous barriers both at the entry to the job market and once they are in a working environment. Uninformed employers perpetuate these difficulties and fail to create an environment that is inclusive and respectful of transgender people.

Yet, attitudes and legislation are changing positively in Luxembourg, in large part thanks to the efforts of transgender people as well as organisations. There is still a long way to go however, so:

→ *How to create a safe and thriving professional environment for transgender people?*

<sup>1</sup> « A long way to go for LGBTI equality », European Union Agency for Fundamental Rights, 2020

This guide contains suggestions and advice to enable Luxembourg companies and their employees - whether they are transgender or not - to educate themselves on the question and to find support. It offers insight into the basic notions of transidentity as a whole, gives an overview of the legal framework in Luxembourg, looks at the stereotypes that need to be deconstructed, and provides practical tips for companies.

Testimonials from the interested parties are crucial for a better understanding of and adequate response to their needs and expectations. This guide aims to involve all the interested parties, and is written with their outlooks, requests and concerns in mind. Its priority partners are the organisations representing transgender people and transgender people themselves.

In partnership with the Centre LGBTIQ+ CIGALE, the Centre pour l'égalité de traitement (CET), Rosa Lëtzebuerg, and the Ministry of Family Affairs, Integration and the Greater Region.



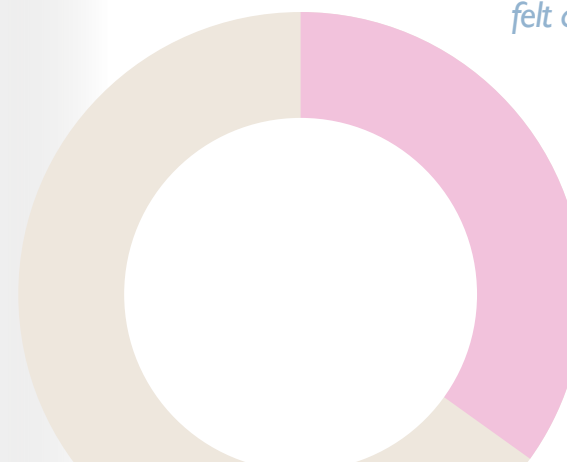
**This guide was created to connect transgender people and employers. It provides information for employers to broaden their knowledge of the issues surrounding transidentity and to act on them. It also offers transgender people the support needed to communicate with their employers.**



**For the inclusivity, the guide is written in gender-inclusive language (using they/them pronouns).**



**35%** of transgender people surveyed felt discriminated against in the workplace in the past 12 months.





# PART GETTING INFORMED

## I. What challenges need to be addressed?



### Creating a safe and inclusive work environment

Transgender people are often victims of stigmatisation, discrimination, hostility and pressure regarding their identity in social contexts, including work environments, in order to accommodate others' expectations. Such experiences can trigger all sorts of psychological reactions that have a negative impact on their emotional well-being, their satisfaction at work and their wish to remain in a company. Creating a safe and inclusive workplace that is respectful of transgender peoples' rights therefore enables them to be their authentic selves and to engage themselves fully in their professional environment.



### Redefining what gender looks like

Everyone is socialised to understand and adopt a gender. A large range of scientific research in social and developmental psychology has shown that gender role behaviour is learned. From a very young age, children are encouraged to adopt stereotypical behaviours and discouraged from adopting non normative behaviours. Because these behaviours are widely shared and deeply rooted, they are extremely difficult to change.

Transgender people are therefore faced with a unique dilemma that constitutes a basis for discrimination. In companies, the foundation for creating a healthy environment is respecting how every individual perceives their own gender.



### Facilitating employment

Transgender people experience high levels of unemployment and underemployment that sometimes results in precarious living conditions. A better understanding of transidentity and of the structural problems that transgender people face enables greater employment opportunities.



2. What's at stake for companies?



Human rights and CSR

Human rights apply to transgender people and as such are part of Corporate Social Responsibility.



Well-being and performance

Improving the company climate by making it more inclusive enables all the employees to thrive, which in turn has a direct positive impact on performance.



A mark of respect

Being truly inclusive and communicating about it enables companies to attract talents who are directly involved in or affected by these topics, while nudging society in the right direction.

## 1. Transidentity is not a choice

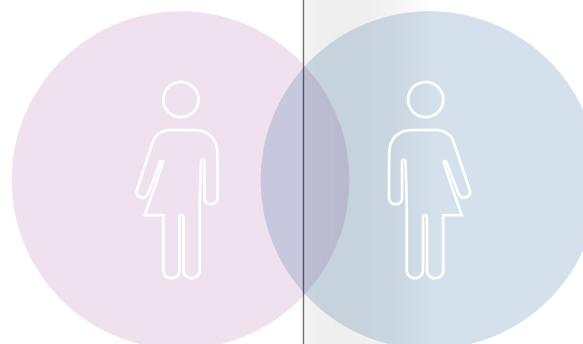
Being transgender is not a choice. It is not a psychiatric disorder either, nor is it a fashion trend or a question of convenience. The only “choice” is starting gender transition and defining how this transition will take place. It is decision-making.

## 2. Gender identity

Regardless of a human being's biological sex, every person will develop a gender identity. Gender identity refers to the intimate feeling of belonging to a gender. Gender refers to the roles, status, rights and identities associated with a sex.

The term cisgender refers to persons whose gender identity coincides with the one usually associated with the sex they were assigned at birth.

Just as with biological sex, gender identity can also have multiple variations. For example, a person may feel that they belong to one of two genders, male or female, or they may experience a non-binary gender identity. Non-binary people may, for example, identify somewhere between the two genders or feel that they belong to both genders or to no gender at all.



## 3. Transidentity

A transgender or trans person is a person whose gender does not entirely match or does not at all match the sex they were assigned at birth. For example, a child who was assigned male at birth and considers themselves to be a woman is a trans woman. And a child who was assigned female at birth and considers themselves to be a man is a trans man.

Some transgender people wish to undergo physical changes to adapt their body to their inner sense of self. This is not always or automatically the case for transgender people.

The only person who can decide to identify as trans is the person themselves, excluding any other criteria.

## 4. Non-binariness

A non-binary (or genderqueer) person identifies neither as male nor female nor in gender binary terms, or identifies as one or the other in a variable and fluid way.

Some non-binary people identify as part of the transidentity community, and others do not.

The only person who is entitled to identify as non-binary is the person themselves, after choosing to come out as non-binary.

So we must never assume that a person is non-binary based on their appearance, and this is also true for transgender people.

## 5. Dysphoria and transitioning

The disconnect between an individual's assigned gender, their gender identity as regarded by others and their own perception of their identity can cause a dissociation with the image a person has of themselves. This can range from detachment (switching into "auto-pilot" mode), to hatred of their own body, which can become dangerous for the person, in particular in a hostile environment. The pain can be both physical and mental.

This is named gender dysphoria (as opposed to euphoria).

You do not need to feel dysphoria to be trans, and dysphoria can take on many different forms for different people.

Transitioning involves a series of changes (physical, mental, behavioural, or administrative, etc.) that enable the person to bridge the gap between their perception of themselves and how they present to the world. Changes might include changing first names, using different pronouns, changing their wardrobe, training their voice, taking a hormonal treatment, getting surgery, or changing their registered sex.

Each of these elements is optional and based on personal choice. A person can be trans and not have transitioned, or they may simply not wish to transition socially, administratively or medically.

It is important to note that not all transgender people experience dysphoria. Dysphoria or the absence of it does not determine a person's transidentity.



## B. GENDER: DIVERSE REALITIES

WRITTEN WITH THE HELP OF THE « LET'S TALK ABOUT SEX » GUIDE jointly developed by APEMH, the LGBTIQ+ Centre CIGALE, CESAS, the Luxembourg Red Cross, Family Planning and the Government of the Grand Duchy of Luxembourg.

## 6. Gender expression

Gender expression refers to the way a person lives, presents and expresses their gender. This can include physical and outward appearance such as body language, gait and voice but may also include individual choices such as clothing, hairstyle or the use of accessories that are typically connoted as representing masculinity or femininity..

Gender expression can differ from a person's gender identity and does not in any way reveal a person's sexual orientation. A woman who is considered "masculine" based on her behaviour or her choice of dress can perfectly identify as a woman and feel feminine. And vice versa.



## 7. Biological differences and sex characteristics

Some people are born with a variation in sex characteristics that can show up on different levels (chromosomal, anatomical, gonadic or hormonal). Intersex or intersexual persons are therefore born with sex characteristics that do not match typical binary definitions of male or female bodies. Their bodies and sex characteristics are healthy, natural variations of human sexes.

Although intersex people are born with variations in sex characteristics, not all of these are visible at birth, and sometimes they appear at different times of life: during the prenatal period, during childhood, puberty or in adulthood. Depending on the circumstances and on physical particularities, some people may not know that they are intersexual. Being intersex is far more common than we think. According to some sources, 1.5% of people have variations in sex characteristics.

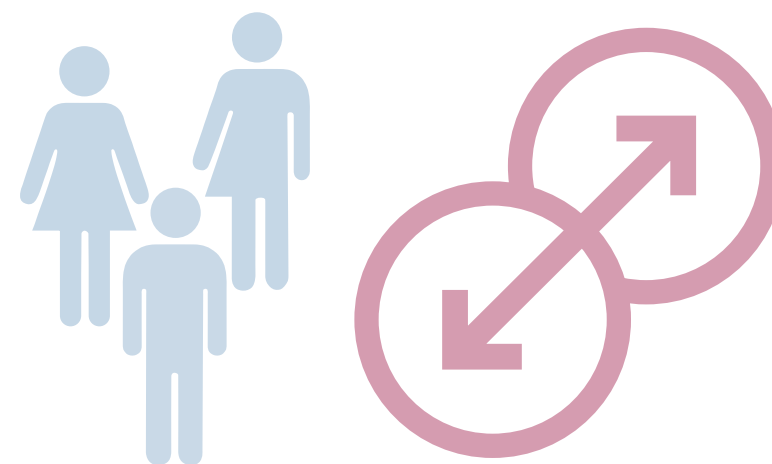
It is preferable to use “biological variation in sex characteristics” rather than the unsuitable term “hermaphroditism” that is sometimes used in everyday language.

Transidentity and intersexuality are two very different things, although a person can be trans and present a variation in sex characteristics at the same time.

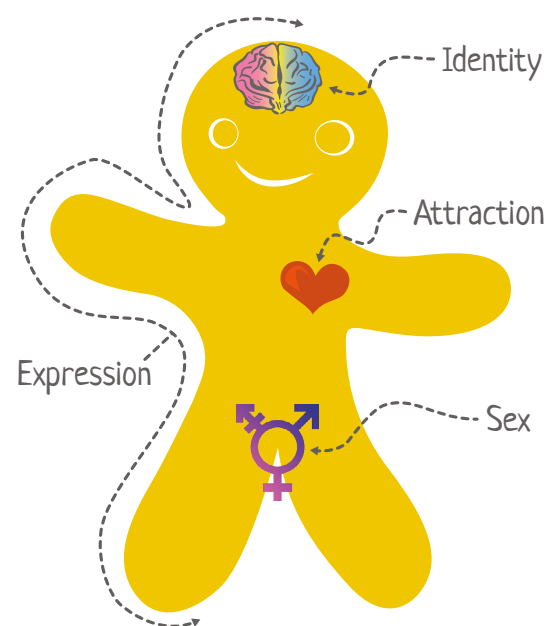


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# The Genderbread Person v4 by its pronounced METROsexual.com



⊘ means a lack of what's on the right side

## Gender Identity

- ⊘ → Woman-ness
- ⊘ → Man-ness

## Gender Expression

- ⊘ → Femininity
- ⊘ → Masculinity

## Anatomical Sex

- ⊘ → Female-ness
- ⊘ → Male-ness

Identity ≠ Expression ≠ Sex  
Gender ≠ Sexual Orientation

Sex Assigned At Birth  
□ Female □ Intersex □ Male

## Sexually Attracted to... and/or (a/o)

- ⊘ → Women a/o Feminine a/o Female People
- ⊘ → Men a/o Masculine a/o Male People

## Romantically Attracted to...

- ⊘ → Women a/o Feminine a/o Female People
- ⊘ → Men a/o Masculine a/o Male People

Genderbread Person Version 4 created and uncopyrighted 2017 by Sam Killermann

For a bigger bite, read more at [www.genderbread.org](http://www.genderbread.org)

Crédit : Sam Killermann

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## 8. Sexual orientation

Sexual orientation is defined by the sex(es)/gender(s) of the person(s) that an individual feels a affinity, is attracted to or desires. This attraction can operate on different levels:

- either it is a purely physical attraction
- or it is an emotional attraction in a romantic sense
- or it is both

There are several sexual orientations. Human beings can feel attracted to people of the opposite sex/gender (heterosexuality), to people of the same

sex/gender (homosexuality), to the two sexes/genders (bisexuality, from a binary perspective), to all sexes and genders including to any non-binary people who do not conform to gender norms (pansexuality) or they might even feel very little or no need at all to experience and share sexuality or love with anyone (asexuality).

Accordingly, transidentity is not a sexual orientation. Gender identity and gender expression are in no way indicative of a person's sexual orientation.

## FOCUS

### The “Genderbread Person” or “Genderbread Man”

The Genderbread Person is a representation of the way in which society constructs gender and the different aspects that come into play. It can be used to understand the differences between identity, gender expression and sexual orientation, but is also a means for self-interrogation or a chance to launch a reflection or spark a conversation on the topic...

The lower part of the representation is used to situate oneself personally: to what extent do you identify as a woman? What is your masculinity level? Maybe it's neither of these? To what extent do you express your femininity/ masculinity? To a large extent or maybe a lot of one and less of the other? You can place a dot on each arrow, several dots on the spectrum, or leave an empty field.





PART

# PROVIDING SUPPORT

*These statements apply in companies but equally well in everyday life.*

### #1. Every trans person is different!

Each one has distinct life experiences, personal expectations and preferences. It is important not to place our own expectations on trans people, for example as regards transition.



### #2. Respect a person's private life!

Not all trans people are open on this issue and they might not wish to discuss it. If a person does not want others to know about their transgender identity, employers must respect their wish and not disclose the information.



### #3. Clumsiness and mistakes.

When you refer to a person using the wrong first name or wrong gender, this is called misgendering. Trans people are often misgendered and experience this as a form of violence. If you do slip up, correct your mistake and apologise.



## A. KEY CONCEPTS



### #4. Everyone can be trans.

Regardless of age, supposed gender, or occupation - being trans is not restricted to a particular category of people.



### #5. Intersectionality is key.

Gender identity can interlock with other marginalised identities (ethnicity, sexual orientation, age, disability...). It is important to take this into account and to consider the person as a whole, and not only through a "transgender" prism.

### #6. Connect words to action!



It's important to let people know that you wish to be inclusive, but this isn't enough to create a safe and healthy professional environment. Use concrete actions as levers to transform this intention into effective change and enable people to thrive.

*Many stereotypes on transgender people persist and are real barriers to the inclusion of transgender people in the labour market. Deconstructing these misconceptions allows for a better understanding of transidentity.*

### “There are only two genders”

**FALSE!** Gender is a social construct, distinct from sex, which was arbitrarily separated in two in our societies.

### “Being trans is a trend”

**FALSE!** This impression comes from the fact that transgender people are speaking up and that they have greater space for freedom of expression to do so in the 21st century. This also allows for more people to become better informed on the subject, and to be able to be open about their transidentity. Remember, transidentity is not a choice.

### “Trans people and transvestites are the same thing”

**FALSE!** Transvestism, or cross-dressing, is an art form. Cross-dressers wear clothes and accessories and/or adopt behaviours that are, in a given society, traditionally associated with the opposite gender, in order to voluntarily look like the opposite gender. Cross-dressing is a question of appearance and is not an identity, as transidentity is.



## B. DECONSTRUCTING STEREOTYPES



### “Transgender people often detransition”

**FALSE!** A 2015 study in the United States<sup>2</sup> demonstrated that only 0.4% of the transgender population surveyed detransitioned because they realized that they were actually not trans. A further 7% detransitioned because of pressure from their families or from their work or private lives.

<sup>2</sup> S.E. James, J.L. Herman, S. Rankin, M. Keisling, L. Mottet, et M. Anafi. « The Report of the 2015 U.S. Transgender Survey. » Washington, DC: National Center for Transgender Equality, 2016.

### “An employee who is transitioning performs less well”

**FALSE!** No, an employee will not perform less well after coming out. On the contrary, as their well-being at work increases, so does their performance, since the person can finally be their authentic self. However, coming out as trans remains a personal choice, and individuals may decide not to disclose their transidentity, which does not entail that they are compromising on their work performance.

### “You can identify someone as trans”

**FALSE!** The same study showed that 57% of the transgender people that were surveyed were “never” or “rarely” identified as a trans person (in this context, being taken at a glance to be a cisgender person is called passing). This figure increases to 88% if we add people who only “sometimes” pass.

### “It’s ok to ask questions about a trans person’s anatomy, and to touch them”

**FALSE!** Without the person’s prior agreement, questions related to a person’s past and to their body should not be asked. One such question is “Have you had the surgery?”, or “Can we say that you’ve been a woman/man?” etc. Just ask yourself if you would ask a cisgender person the same kind of question. It goes without saying that it’s not ok to touch anyone without their consent.

As mentioned above, you must connect words to action! Here are a few ideas to create a safe and inclusive environment in concrete steps:

## I. Anti-transphobic policies

Transphobia consists in any intentionally or unintentionally hostile comment, attitude, action or behaviour towards people who are transgender or who are assumed to be transgender. It is important to have clear, precise policies against transphobia both in and outside the company. The keystone for someone to thrive at work is ensuring that all employees work in a safe, respectful and informed environment.



### At the recruitment stage:

A major element of the recruitment process is ensuring that transgender applicants are not discriminated against. Besides the fact that it is a legal requirement, adding a sentence in a job offer indicating to potential candidates that the company is committed to respecting and promoting diversity, including gender diversity, can contribute to this aim.



Example of a diversity statement in a job offer:

*"We make it our priority to ensure quality of life in the workplace and we firmly believe that diversity and inclusion are an asset for our employees and our business."*

## C. TAKING ACTION IN COMPANIES



### In the company:

It is important to have a zero-tolerance policy on transphobia. Being indulgent will not help improve the work climate. Reprimanding and/or sanctioning any person who exhibits transphobic behaviour is an obligation and it also demonstrates genuine support for transgender employees. In certain circumstances it may be necessary to provide education on the issue.

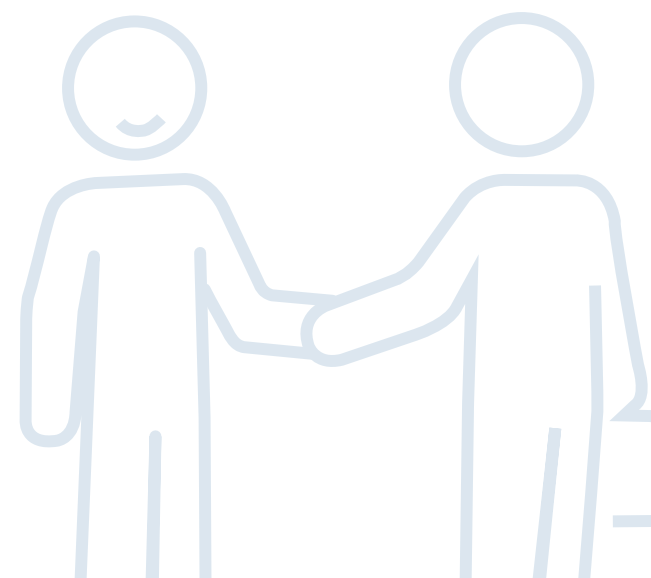
### Outside the company:

When employees meet clients, partners, or members of the public, the protection of the rights of transgender people must similarly be upheld. Whether it is by protecting the rights of transgender people by refusing to serve transphobic clients or by condemning employees who make transphobic comments, the policy must be consistently sustained.



### TIPS:

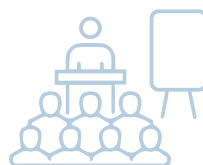
*In job offers, following the job title, add F/M/X to be inclusive from your very first contact with the candidate. The X refers to all sexes and genders. Another option is to omit these markers and to state that anyone is welcome to apply.*



## 2. Transidentity training

Anti-discrimination policies are impossible to implement if employees have no prior awareness of transidentity. Enabling employees to access transidentity training during work hours - on a voluntary or on a mandatory basis – helps them provide a better welcome for their colleagues, allows them to discuss the issue more easily, and changes mentalities in a positive way.

Ideally, all the staff should be trained on the topic. However, training must be adapted to suit different target audiences:



### Human resources services and the people in charge of recruitment:

HR services are the ones with the most immediate contact with employees. Training them on transidentity and on the importance of respecting trans people's rights in companies allows them to better advise and support transgender people if necessary. Additionally, training recruitment managers reduces the potential for transphobic discrimination at the recruitment stage.

### Managers:

To create a favourable environment, it is essential for authority figures to adopt inclusive behaviours. When top managers demonstrate their support, there tends to be a positive effect on trans people as well as on all other employees.



## C. TAKING ACTION IN COMPANIES



For organisations that are unable to set up these courses, some associations offer a wealth of advice and can direct people towards the appropriate documentation.



### TIPS:

Offer diversity training with a focus on transidentity at the onboarding stage. The Rosa Lëtzebuerg association offers training sessions with content adapted to employee status.

## FOCUS

### Unconscious bias

Discrimination stems largely from unconscious biases (Kahneman, 2013<sup>3</sup>). Unconscious biases lead us to making positive judgements on people who are like us, before we even get to know them, and to negatively “prejudge” the others. Unconscious biases are also at the source of the inaccuracy of stereotypes. On the whole, unconscious bias contributes to the discrimination of people who belong to another group than ours.

According to the European Agency for Fundamental Rights (FRA), any action plan to improve the integration of transgender people could be articulated around unconscious bias training. This training focuses on helping individuals become aware of their unconscious prejudices and stereotypes and teaches them how to overcome them.

<sup>3</sup> Kahneman, D. (2013), “Thinking, Fast and Slow”, Farrar, Straus et Giroux.

### 3. Supporting transgender employees on a daily basis

There is no formal process for what to do and how to behave. Every organisation and context is different and must be analysed as a whole. However, some practices and behaviours make it possible to get closer to creating a safe and sound environment for transgender people, and communication with the interested parties is imperative.

#### Vital records:

- Let the person choose whether they wish to disclose their transidentity to anyone else, whether clients or employees.

#### On arrival in the company, during the coming-out and/or transition process:

- Offer to establish a follow-up with a trusted contact person for the employee's first few months in the company or during their transition. This can be with their manager, a member of the HR department, a member of the company's LGBTI network...
- Determine with the employee if and how they wish to talk about their transidentity with their colleagues: do they wish to come out themselves? to let the manager disclose it? Or do they choose not to disclose it at all?
- Ensure other employees are supportive, in the way requested by the transgender person in question.

#### Days of leave:

- On request, provide the possibility to have a few days of leave following a coming-out, just to give time to better inform the teams and smoothen the administrative transition.

## C. TAKING ACTION IN COMPANIES



#### Use of the person's chosen name and of the right pronouns:

- Allow employees to change their names and information in the company files on request, even without an official name change at the Civil Registry and/or physical transition. Do the same for internal company materials, such as badges, name-plates, e-mail addresses, user names, business cards....
  - Do not use the person's deadname (former name) even when talking about the past.
  - As a general rule, avoid gendering a person that you don't know: for example avoid saying Ms. or Mr. when greeting someone (for example, address groups as ladies, gentlemen, and anyone who does not identify in these terms / and letters To Whom it May Concern).
  - Announce your own pronouns (he/him, she/her, they/them...) when introducing yourself to someone for the first time. It can encourage the person you're meeting to do the same thing. This information can also be included in email signatures and business cards...
- For example: "Hello, I'm Dominique. I use "she/her" pronouns, and I work in the Human Resources Department. Nice to meet you!"

#### Breaking gender binary norms:

- For toilets and changing-rooms: the ideal arrangement is to offer facilities for women, facilities for men as well as non-gendered facilities. But it's also a good idea to offer individual, lockable, entirely closed booths (with no gap under the door or above the walls). And let everyone use their preferred space. This is also a way to ensure people's safety.
- Let everyone wear the clothes they choose. If there is a dress code or uniform, make sure it is gender-neutral.

#### Relocations and business trips:

- In accordance with present laws (see PART III), before sending a transgender employee abroad, check that their safety can be ensured.
- During a relocation or a business trip, follow up on the employee's situation once they have arrived to make sure the person is comfortable and safe there.
- Ask for feedback after the trip or the move, to identify any problems encountered related to transidentity and to adjust for future experiences for transgender employees abroad.



**TIPS:** Make sure that the company's diversity manager is clearly identified and can be contacted by all the workers. For example by informing all new recruits, by displaying the information prominently for all employees, or through an intranet broadcast.

#### 4. LGBTI network in the company

A network or an ERG (Employee Resource Group, a reference group for employees) is a group led by voluntary workers in a company to foster a diverse and inclusive workplace, in accordance with the organisation's mission, values, goals, commercial practices and objectives.



Setting up a network with the company's LGBTI people helps create a sense of community and belonging for the employees. This group can also be in contact with the company management to advise them on any decisions related to LGBTI issues.

However, for people who wish to keep their trans journey private, belonging to such a network can lead to an unwanted disclosure. Participating in an ERG is a voluntary act, and every individual can decide whether it can help them or not.

For organisations that are unable to create such a network, setting up a focus group on diversity in the workplace can be a first step to improving the workplace atmosphere for transgender people.

## C. TAKING ACTION IN COMPANIES



#### 5. Supporting the transgender community outside the company




In addition to demonstrating the company's commitment to the wider transgender community, and not only to the employees, publicly asserting its support of transgender rights helps drive society towards broader positive changes.

It is important to communicate about your support of transgender people while carrying out concrete actions. This attracts new talents, and shows that the company is an LGBTI ally. Here are some examples of what companies can do:

- Provide skills-based sponsorship and/or financial support to organisations that work for the rights of transgender people;
- Organise recruitment sessions in cooperation with institutions working for inclusion;
- Decide to invest in countries or work with clients who defend the rights of transgender people;
- And refuse to work with transphobic clients, or to invest in countries that adopt transphobic legislation.

These levers can be powerful means of initiating change.





PART

# THE LEGAL FRAMEWORK IN LUXEMBOURG

## PART 3 - THE LEGAL FRAMEWORK IN LUXEMBOURG

Draft by the law firm DSM Avocats à la Cour

### A. FOR TRANS WORKERS

Few specific questions regarding transidentity are explicitly regulated by Luxembourg law, particularly in terms of labour law.

Therefore, in each situation it is necessary to ask whether or not the behaviour the employee facing is likely to constitute prohibited behaviour under the Labour Code, such as a case of discrimination or harassment.



*Any analysis of the gender of employees in a company contains sensitive data, the collection and processing of which are in principle prohibited by the GDPR.*

*However, this data may be collected under certain conditions, one of which is the data subject's consent.*

If this data is collected and processed based on consent, the consent must be freely given and informed, especially in an employment relationship in which using this legal basis is not recommended because of the hierarchical relationship between the employee and their employer.

For example, adding an "I prefer not to answer" tick-box is one way of ensuring that this legal basis is used correctly.

Other GDPR-specific obligations apply to this processing: the rights of the data subject, information of the data subject, DPIA, safety measures, etc.



Anonymizing the replies is a way of leaving the scope of the GDPR since the data is no longer personal (provided the data is completely anonymized (from collection to deletion, for all the stakeholders involved), and pseudonymizing them can alleviate some of the GDPR requirements detailed above.

**Freely given and informed consent**

**Anonymizing the replies**

## B. SURVEYS



**TIPS:** Conducting internal surveys can be useful in supporting proposals for action with management. However, as mentioned above, this type of survey must comply with current legislation. Here are a few writing tips:

- Mention why you are requesting this information: for example, to help a study on transidentity in the workplace, for safety reasons, for the organisation's LGBTI network...
- Use respectful forms of speech, such as "Do you identify with the gender that was assigned to you at birth?"
- Allow people the possibility of changing their replies

## I. What is the scope of protection afforded by law?

### A protection that exceeds the scope of labour law

While transgender people are all too often still vulnerable to discrimination, it is important to assess the protection afforded them by “the law” in the broad sense.

Although it is true that legal provisions aimed at protecting transidentity are at times only in their infancy and may in practice sometimes prove to be insufficient, nevertheless, knowing one’s rights is the best way to ensure that they are respected.

In this regard, firstly, it is important to note that the protection of gender identity far exceeds the framework of domestic law.

Indeed, transgender people in the Grand Duchy of Luxembourg are not only protected by national institutions and domestic law, but also by “supranational” bodies and laws.

These laws take precedence over the national authorities over which they prevail.

One eminent example of this is the protection granted by the **European Convention on Human Rights** (“ECHR” in abbreviated form) signed by the members of the Council of Europe on 4<sup>th</sup> November 1950.

*Article 14 of the Convention provides the following:*

*“Prohibition of discrimination*

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

This article prohibits not only discrimination based on a person’s biological sex but also on gender identity.

The Grand Duchy of Luxembourg ratified this Convention in 1953 and it is fully enforceable on the national territory.

## C. DEALING WITH DISCRIMINATION RELATED TO TRANSIDENTITY



In principle therefore, any transgender person who believes they are a victim of a breach of this Convention and in particular of its Article 14 may, if there has been a violation of Article 14 and under certain conditions, bring an action against the State of the Grand Duchy of Luxembourg by referring the matter to the European Court of Human Rights based in Strasbourg and claim compensation.

While the conditions for such action before the European Court of Human Rights are strictly regulated and in principle it is necessary to have exhausted all the domestic remedies of the State concerned, the fact remains that the provisions of the European Convention on Human Rights can be raised directly before domestic courts during a trial.

It is crucial to keep this in mind since Article 14 of the European Convention on Human Rights can be raised when trying to suppress a domestic law provision that, despite being in force, is in breach of the ECHR.

## I. What is the scope of protection afforded by law?

### A protection that exceeds the scope of labour law

It is equally important to highlight that on a national level, the protection of transidentity also greatly exceeds the framework of labour law.

Indeed, transgender identity is protected at the core of the most important national legal document, the Constitution of the Grand-Duchy of Luxembourg of 17<sup>th</sup> October 1868 (amended several times since), which prevails over all other standards of domestic law such as namely the Labour Code.

Thus, **Article 10 bis paragraph 1 of the Constitution of the Grand-Duchy of Luxembourg** provides that:

*“Luxembourgers are equal before the law”, to which Article 111 adds that: “Every foreigner in the territory of the Grand Duchy enjoys the protection granted to persons and to property, save the exceptions established by law” and Article 11 paragraph 2 provides that “Women and men are equal in rights and duties. The State sees to the active promotion of the elimination of any obstacles that may exist in matters of equality between women and men”.*

Keeping in mind that the State Constitution guarantees rights to transgender people is also important in order to be able to verify and ensure that the other national law standards which these persons may face do not conflict with any such protection.

## C. DEALING WITH DISCRIMINATION RELATED TO TRANSIDENTITY



In this sense, if a transgender person is, during legal proceedings before labour courts for example, confronted to a provision that they deem contrary to the protection offered by the Constitution, then they can in principle refer the matter to the Constitutional Court of the Grand Duchy of Luxembourg in order to ask it to verify the compliance of such law with the Constitution.

If a provision is found to be non-compliant with the Constitution, labour courts in charge of the dispute cannot then apply said provision.

## I. What is the scope of protection afforded by law?

### Protection under labour law

While the protection of transidentity fortunately exceeds the framework of labour law, it remains crucial to focus on the specific protection offered by this branch of law to transgender people, in particular since it governs work relations, which are a significant part of life in society.

For all disputes relating to employment contracts, apprenticeship contracts, and complementary pension schemes that arise between employers and their employees, including those that occur after the contractual relationship between them has ended, labour courts have jurisdiction, namely the Labour tribunal (Tribunal du travail) as the court of first instance, and the Court of Appeal (Cour d'appel) as the appellate jurisdiction hearing matters related to labour law.

Therefore, in principle, any employee who is experiencing difficulties relating to their transidentity as part of their relations with their employer or colleagues and/or any other persons they are in contact with through work (see below) should bring their case before these courts.

It is important to note that, for proceedings before the Labour tribunal, there is no obligation to hire a lawyer, although it is recommended. Standard forms for proceedings are available, for example on the Chamber of Employees website.



However, representation by a lawyer becomes mandatory for proceedings before the Court of Appeal.

Now that these procedural keystones have been identified, we will turn our focus on the protection offered concretely by labour law as regards gender identity.

In this regard, in its present form Luxembourg labour law protects transgender people mostly against the scourges that are on the one hand discrimination, and on the other hand harassment, as well as from any situation that might stem from these.

However, since, as we will see, these two notions cover a number of possible situations, we will here limit our analysis to the provisions that are more specific to questions of gender transidentity.

### Discrimination based on sex

Discrimination is not necessarily based on a person's sex.

On the contrary, discrimination may also occur when an unjustified difference in treatment between employees is based on one of the other distinguishing criteria prohibited by the Labour Code, that is: religion or belief, disability, age, sexual orientation, membership or non-membership of a nationality, race or ethnic origin.

We will however focus our analysis here to discrimination based on sex, while keeping in mind that in the event of distinct cases of protection, the protection is of course cumulative.

Accordingly, a transgender person must of course not be subjected to discrimination based on any of the above-mentioned grounds, although these issues will not be addressed below.

### Définitions - Scope of protection

Since a law of 3<sup>rd</sup> June 2016 amending namely Article L. L. 241-1. (1) of the Labour Code, it is now expressly provided that *discrimination based on a change of sex is equated with discrimination based on sex as such*.

*Article L. 241-1. (1) of the Labour Code thus provides more specifically that:*

*“Any discrimination based on sex, whether directly or indirectly by reference namely to the matrimonial or familial status is prohibited.*

*Discrimination based on a sex change is equated with discrimination based on sex”.*

It is followed by **Article L. 241-1. (2) of the Labour Code** that more specifically defines the notion of discrimination and prohibits in principle both situations of **direct discrimination** as well as of **indirect discrimination**.

## I. What is the scope of protection afforded by law?

## Protection under labour law

**Direct discrimination:** occurs when, because of their sex, a person is treated less favourably than another is, has been or would be in a comparable situation.



## Examples:

- The employer refuses to hire people who have changed sex;
- The employer fires an employee because of their sex change.

In principle, any form of direct discrimination is strictly prohibited under this Article.

*Article L. 241-3. of the Labour Code provides however as a unique exception that:*

*“ [...] any difference in treatment based on a characteristic related to sex is not discrimination under this law when, because of the nature of the particular professional activities involved or within the framework in which they are carried out, such a characteristic is an essential and determining professional requirement, provided that the objective is legitimate and the requirement proportionate”.*

To date, there is no ruling in the Grand Duchy of Luxembourg on the question of the justifiable or non-justifiable nature of a difference in treatment based on transidentity. However, it is hard to imagine any substantive justification for exceptions in this context.

**Indirect discrimination:** occurs when an apparently neutral provision, criteria, or practice puts people of one sex at a particular disadvantage in comparison to people of another sex, unless this provision, criteria or practice is objectively justified by a legitimate goal and the means to reach this goal are appropriate and necessary.



Nevertheless, the employer's decision can avoid being qualified as indirect discrimination if the employer can prove the existence of an objective justification for the criteria they have chosen.

Again, there is no relevant Luxembourg legal precedent on exceptions to the principle of indirect non-discrimination.

*Moreover, labour law is not limited to prohibiting discrimination based on sex as such, but also prohibits through Article L. 241-1. (4) of the Labour Code any discrimination through “instruction”.*

*“Any behaviour that consists in instructing someone to practice discrimination towards people based on sex is considered as discrimination under this chapter”.*

## Example:

- If an employer refuses to give a bonus to employees who have been on sick leave during the year, it should be possible to consider this as constituting indirect discrimination towards transgender people. Indeed, if for example an employee has been undergoing a medical transition that year, they have necessarily been on sick leave.



## I. What is the scope of protection afforded by law?

### Protection under labour law

#### Examples:

- If an employer instructs their human resources department not to recruit transgender people.

Accordingly, as these behaviours are considered to be cases of discrimination, they are prohibited under the same terms.

Moreover, there is little question that the prohibition of discrimination against transgender people because of their transidentity can be useful only if employees who are its victims enjoy specific measures of protection when they challenge or complain of said discrimination.

*Article L. 241-8. of the Labour Code therefore adds within this framework that:*

*“Employees shall not be subject to retaliation either for protesting or refusing an act or behaviour that is contrary to the principle of equal treatment [between men and women] as provided by this law, nor as a reaction to a complaint filed at company level or to a court action aimed at upholding the equal treatment principle.*

*Likewise, employees shall not be subject to retaliation for testifying or reporting on the actions defined in Article L. 241-1.*

*Any provision or any act that is contrary to the two preceding paragraphs, and namely any dismissal that violates these provisions, is null and void.*

*In the event that the employment contract is terminated, employees can, within the two weeks following the notice of termination, petition the president of the emergency labour court by simple request, once the parties have been heard or duly summoned, to declare the termination null and void and to order that they be maintained or reinstated, as the case may be”.*



Therefore, if a dismissal is based on a prohibited ground, the employee can, within a fifteen-day deadline, petition to have the dismissal declared null and void and therefore retain or recover their employment.

It is important to note that if the prohibited ground is substantiated, the judge has no discretionary powers and must immediately pronounce the dismissal on this ground to be null and void, and must equally order the employee's retention or, in the event of a termination with immediate effect, the employee's reinstatement into the company.

Needless to say, this is not necessarily the ideal solution for the person subject to retaliation, since they might not necessarily wish to continue in said employment.

This then raises the question of whether in such a case the employee, rather than petitioning for the dismissal to be declared null and void and for their retention or reinstatement in the company, can choose to petition for the dismissal to be declared a case of unfair dismissal and claim compensation in accordance with the protection afforded by general law against unfair dismissals.

The courts have not yet ruled on this issue regarding discrimination cases.

## I. What is the scope of protection afforded by law?

### Protection under labour law

#### SANCTION

Despite the prohibition of discrimination based on sex change and/or gender identity, employers may still try to insert discriminatory provisions in employment contracts or in the company's internal regulations.

While such practices can be used for intimidation or dissuasive purposes, it is important to keep in mind that such provisions are necessarily null and can in no event be applied to the detriment of employees.

*Indeed, Article L. 241-9. of the Labour Code provides very clearly that:*

*“Shall be deemed null and void any provision in a contract, in an individual agreement or in a collective agreement, in a company's internal regulations, as well as in the rules governing profit or non-profit organisations, independent professions and organisations of employees and employers, that is contrary to the principle of equal treatment [between men and women]”.*

Example:

- If the employment contract states that a sex change will be treated as an employee's gross misconduct that may result in the employee's dismissal, this clause will be deemed to be null and void. In other words, it will not apply and the employer will under no circumstances be able to rely on it. If all the same the employer dismisses the employee on the basis of such a ground, the dismissal will be deemed unfair.



#### BURDEN OF PROOF

As regards discrimination, the Labour Code provides for an alleviation of the burden of proof as it may in practice be very difficult for an employee to prove that they are, or have been, a victim of discrimination.

While such practices may intend to intimidate or deter, it must be borne in mind that such provisions are necessarily void and cannot be applied to the detriment of an employee.



Therefore, as part of the proceedings before the labour courts, if the employee succeeds in providing substantiated evidence that makes it possible to assume that discrimination is occurring or has occurred, it is then up to the employer to prove that such is not the case.

## C. DEALING WITH DISCRIMINATION RELATED TO TRANSIDENTITY



For example, the employer will then be able to prove that there is an objective justification for the decision that led to a difference in treatment.

*This principle of the alleviation of the burden of proof is articulated in Article L. 244-3 of the Labour Code:*

*“When persons who deem themselves wronged by a failure to comply with the principle of equal treatment establish, before a court or other competent authority, facts from which it may be inferred that there has been direct or indirect discrimination, it shall be for the defending party to prove that there has been no breach of the principle of equal treatment”.*

## I. What is the scope of protection afforded by law?

## Protection under labour law

## Harassment

Labour law covers three types of harassment:

- Psychological harassment (Article L. 311-1 of the Labour Code, Article 1134 of the Civil Code, Grand-Ducal Regulation of 15th December 2009 on the general obligation of the Convention on harassment and violence in the workplace agreed between the OGB-L and LCGB unions, on the one hand, and the UEL, on the other hand);
- Discriminatory harassment (Article L. 241-1 (2) and (3) and Article L. 251-1 (3) of the Labour Code);
- Sexual harassment (Article L. 245-2 of the Labour Code).

As psychological harassment is not related to sexual issues and/or sex change or transidentity, it will not be addressed here.

Naturally, psychological harassment remains prohibited and transgender people can assert their rights if a case of psychological harassment is proved.

## Définitions - Scope of protection

The Labour Code distinguishes between **discriminatory harassment based on sex** and **sexual harassment**.

The notion of discriminatory harassment based on sex is defined in **Article L. 241-1. (2), 3rd item of the Labour Code**:

“Harassment”: any instance in which unrequited behaviour related to a person’s sex occurs, which aims to or results in harming a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment.



## Example:

- Recurring insults related to an employee’s transidentity.



Article L. 241-1. (3) of the Labour Code specifies that:

“[Discriminatory] harassment [based on sex] and sexual harassment as defined in Article L. 245-2 are considered sex discrimination and are as such prohibited.

The rejection of such behaviour by the person concerned or their submission to such behaviour cannot be used as grounds for any decision affecting this person”.

In practice, it may be difficult to prove that the discriminatory harassment is committed because of the victim’s transidentity.

Having said this, if the victim of discriminatory harassment based on sex (or sexual harassment as developed below) succeeds in proving they have been harassed, they can obtain the same protection as in discrimination cases, namely that retaliation is prohibited. They can under the same protection petition the labour courts to declare null and void any act that is contrary to the provisions prohibiting discriminatory harassment based on sex (or prohibiting sexual harassment).



As for sexual harassment, it is defined in Article L. 245-2 of the Labour Code:

“Sexual harassment in work relations occurs when [...] there is any sexually connoted behaviour or any other behaviour based on sex by the person guilty of committing it who knows or should know that it affects a person’s dignity, when one of the following conditions is met:

1. the behaviour is unrequited, untimely, abusive and hurtful for the person who is subject to it;
2. the fact that a person refuses or accepts such behaviour from an employer, an employee, a client or a supplier is used explicitly or implicitly as a basis for a decision affecting this person’s rights as regards professional training, work, work retention, promotion, wages or any other decision related to work;
3. such behaviour creates an intimidating, hostile, degrading, humiliating or offensive work environment for the person who is subject to it.

The behaviour covered can be physical, verbal or non-verbal.

The intentional element of the behaviour is assumed”.

## I. What is the scope of protection afforded by law?

### Protection under labour law

Example:

- Fondling, sexually connoted words and/or gestures, etc.



**Article L. 245-3. of the Labour Code** provides that sexual harassment in work relations is considered contrary to the principle of equal treatment between men and women.

To this, **Article L. 245-4. of the Labour Code** adds that:

“ (1) Employers and employees shall abstain from any acts of sexual harassment during work relations, as shall any of the company’s clients or suppliers.

(2) Moreover, employers shall ensure that any sexual harassment that they are aware of ceases immediately. Under no circumstances can the measures aimed at putting an end to the sexual harassment be taken at the harassment victim’s expense.

(3) Employers shall also take all necessary preventive measures to guarantee that the dignity of all persons will be protected in the course of work relations. These measures must include information measures”.

Accordingly, the protection against the sexual harassment that transgender employees (and other employees) may face is more than a mere protection from the employer and other employees. Indeed, it extends to any of the company’s clients or suppliers with which the transgender employee may come into contact as part of their work.

Nonetheless, while employers are duty bound to put a stop to any harassment that has come to their attention, they must in effect have actual knowledge of it.

Therefore, any employee who is a victim of such actions must notify their employer and/ or their direct managers of the facts they consider they are a victim of.



In such cases we recommend keeping proof of such notification by acting preferably in written form or at least in the presence of witnesses.

The Labour Code does not specify what sanctions employers must or can apply to the sexual harasser.

Employers must therefore choose among possible disciplinary sanctions which one they consider most appropriate to the seriousness of the offenses (warning, dismissal, etc.).

*In addition to the above, Article L. 245-5. of the Labour Code also provides that:*

« (1) Employees shall not be subject to retaliation either for protesting or refusing an act or behaviour of sexual harassment from their employer or any other direct managers, work colleagues or any outside persons who are connected with the employer.

(2) Furthermore, employees shall not be subject to retaliation for testifying about the actions defined in Article L. 245-2 or for having reported them.

(3) Any provision or any act that is contrary to the two preceding paragraphs, and namely any contract termination that violates these provisions, is null and void.

*In the event that the employment contract is terminated, employees can, within the two weeks following the notice of termination, petition the president of the emergency labour court by simple request, once the parties have been heard or duly summoned, to declare the termination null and void and to order that they be maintained or reinstated, as the case may be, in accordance with the provisions of Article L. 124-12, paragraph (4) [...]”.*

### BURDEN OF PROOF

As in the case of discrimination, the Labour Code provides for an alleviation of the burden of proof for discriminatory harassment as well as for sexual harassment (Article L. 245-3 of the Labour Code). The principle is the same as that developed above.

*As regards sexual harassment, the Labour Code also provides under Article L. 245-2 (3), last sub-paragraph, that the intentional element is assumed:*

*“The intentional element of the behaviour is assumed”.*

Therefore, if the employee is able to establish before the labour courts that deeds that may be characterised as sexual harassment have been committed towards them (inappropriate comments, fondling, etc.), it will be assumed that their perpetrator has willingly acted to harm the employee’s integrity, and it will be up to the perpetrator to prove that this has not been the case.

## I. What is the scope of protection afforded by law?

### Protection under labour law

#### POSSIBILITY OF RESIGNING FOR EMPLOYEES WHO ARE VICTIMS OF HARASSMENT

Unfortunately, despite all the provisions that aim to protect employees against discriminatory or sexual harassment, in certain cases the person who is a victim of such offenses has no choice but to leave their company if the situation does not improve.



In this case, the employee who is a victim of harassment can:

- resign with prior notice, in which case they cannot claim compensation from their employer, except perhaps for moral prejudice, and in this case they will be deprived of unemployment benefits; or
- resign with immediate effect, in accordance with **Article L. 245-7** of the Labour Code, for gross misconduct on the employer's part, in which case if the employee proves the employer to be culpable of inaction, they can claim compensation for non-material and material damage. In such cases, the employee can request unemployment benefits on a temporary basis, which they can then keep if they win their case against the employer, but which they will have to reimburse if the employer's gross misconduct is not substantiated.

## C. DEALING WITH DISCRIMINATION RELATED TO TRANSIDENTITY

### Penal sanctions

In addition to these aspects of labour law, discriminatory offenses may also result in criminal prosecution and sanctions.

*Indeed, Article 454 of the Penal Code expressly prohibits any discrimination based on sex change and gender identity and provides that:*

*"Discrimination occurs when a distinction is made between natural persons because of their origin, their skin colour, their sex, their sexual orientation, their sex change, their gender identity, their family status, their age, their health, their disability, their habits, their political or philosophical opinions, their trade union activities, their membership or non-membership, actual or supposed, to a given ethnic origin, a nation, a race or a religion.*

*Discrimination also occurs when a distinction is made between legal persons, groups or communities of persons, because of the origin, skin colour, sex, sexual orientation, sex change, gender identity, family status, age, health, disability, habits, political or philosophical opinions, trade union activities, membership or non-membership, actual or supposed, to a given ethnic origin, nation, race or religion, of the members or some of the members of these legal persons, groups or communities".*

Thus, any person who considers they are a victim of discrimination based on their sex change and/or gender identity may bring a suit before the criminal courts in order to request that the offender be sentenced.



## I. What is the scope of protection afforded by law?

## Penal sanctions



Without going into too much detail, it is important to note that as part of legal proceedings, if the offender is declared guilty of discrimination under Article 454 of the Penal Code, they may be sentenced to pay a fine to the State and/or to a prison term, and in some cases they may be ordered to compensate the victim.

Article 455 of the Penal Code provides that any discrimination referred to in Article 454 is punishable by a prison term ranging from eight days to two years and by a 251 euro to 25,000 euro fine or by one only of these two penalties, namely when the discrimination consists in refusing to recruit a person, sanctioning or dismissing them, and/or in conditioning access to work, all types of professional training, as well as conditions of work, membership and involvement in a workers' or an employers' organisation to one of the elements referred to in Article 454 of the Penal Code.

In order to launch criminal proceedings, victims of discrimination under Article 454 of the Penal Code can:

- file a complaint in a police station;
- file a written complaint with the Prosecutor (Parquet);
- file a written complaint bringing a civil suit before the investigating judge (juge d'instruction), in which case the victim will have to register a sum of money determined by the investigating judge in order to cover the cost of proceedings (generally a few hundred euros).

More information on this process is available on the [www.justice.lu](http://www.justice.lu) website.

Lastly, it is important to highlight the fact that bringing criminal proceedings does not deprive discrimination victims of their right to also lodge a complaint before labour courts, for example in order to cancel a dismissal based on discriminatory grounds.



## 2. Who to contact in case of discrimination or harassment?

*The main organisations to turn to in the event of discrimination or harassment are listed below.*



Nevertheless, it is important to note that it may be advisable to seek the assistance of a lawyer because of the particularly technical level of the proceedings that may be implemented.

Employees with insufficient financial resources to cover their defence fees may apply for legal aid from the Bar Council (Conseil de l'Ordre des Avocats) whose contact details are shown below.

### *In the event of discrimination*

#### EMPLOYER

Employees can of course inform their employer of the problems that they deem themselves victims of and request the employer's assistance in putting a stop to the offenses.

In these circumstances, as developed above, employees are protected under **Article L. 241-8 of the Labour Code** and cannot be subject to retaliation because of any such denunciation.

Of course, if the employer is the offender, it is not particularly useful to turn to them for help.

In such cases it remains advisable to send the employer a letter of formal notice to cease all discriminatory behaviour.

#### STAFF DELEGATIONS

Employees can also generally always contact the company's staff delegation if there is one. With the employee's agreement, the delegates can act as mediator between the employee and the employer in order to put a stop to all discriminatory offenses.

*In this context, attention is drawn to Article L. 414-2. of the Labour Code that provides that:*

*“(1) The general mission of the staff delegation is to safeguard and defend the interests of a company's salaried employees as relates to working conditions, job security and social status”.*

However, generally, staff delegations exist only in companies with a minimum of 15 employees.

If a staff delegation is indeed in place, in compliance with **Article L. 414-15 (1) of the Labour Code**, it appoints - among its members or among other company employees - an **equality officer**, to which a transgender employee who considers they are a victim of discrimination can also turn to.

*The equality officer's mission is defined by Article L. 414-15 (2) of the Labour Code:*

*“The equality officer's mission is to defend equal treatment [...] as regards access to employment, training and professional promotion, as well as payment and work conditions”.*



## 2. Who to contact in case of discrimination or harassment?

*The main organisations to turn to in the event of discrimination or harassment are listed below.*

### *In the event of discrimination*

#### THE INSPECTORATE OF LABOUR AND MINES (ITM)

The Inspectorate of Labour and Mines (ITM – Inspection du Travail et des Mines) is one of the main authorities in charge of monitoring and supervising the proper application of legislation as regards non-discrimination (Articles L.241-10 and L.254-1).

Discrimination offenses can therefore be referred to the ITM, which will intervene directly with the employer when appropriate.

#### CENTRE FOR EQUAL TREATMENT (CET)

The Centre pour l'égalité de traitement (CET) was created by a law of 28<sup>th</sup> November 2006, specifically to deal with discrimination issues.

Its mission is namely "to assist persons who deem themselves to be victims of discrimination by providing them with a counselling and guidance service that aims to inform victims of their individual rights, as well as on legislation, case law and the best means to assert their rights".

The CET is also in charge of producing and supplying any information and documentation necessary as part of its mission. However, its decisions are not legally binding towards the employer or other employees.

#### NON-PROFIT FIGHTING AGAINST DISCRIMINATION

Any person who is a victim of discrimination can also take legal action through a national non-profit organisation, although there are currently not yet that many.

In this respect, the non-profit ACTION LUXEMBOURG OUVERT ET SOLIDAIRE - LIGUE DES DROITS DE L'HOMME A.S.B.L. has been granted the ministerial approvals to take legal action namely in the more general field of anti-discrimination. Transgender persons can of course contact them in the event of a problem.

## 2. Who to contact in case of discrimination or harassment?

*The main organisations to turn to in the event of discrimination or harassment are listed below.*

### *In case of harassment*

#### EMPLOYER

Employers must take all necessary measures to stop any acts of harassment taking place in their company as soon as they have been made aware of the problem. In this context, employers have a duty to “investigate” (obligation d’enquête). Where necessary, they must then decide what sanctions are appropriate for the harasser.

Therefore, victims of acts that constitute harassment must inform their employer, preferably in writing, so as to keep documented proof that they have indeed notified them.

If the employer fails to act in cases of harassment from work colleagues, the employee can try to hold the employer civilly liable.

#### EQUALITY OFFICER

Article L. 245-6. of the Labour Code also empowers the Equality Officer (Délégué à l'égalité) on the matter:

*“(1) The equality officer, or if there is none, the staff delegation, if there is one, is in charge of ensuring the protection of all paid staff against sexual harassment during work relations. To this end, they can recommend to the employer any preventive action they deem necessary.*

*(2) The staff delegation and the equality officer, if there are any, are authorised to help and advise any employee who is subject to sexual harassment. The staff delegation and the equality officer are bound by confidentiality requirements as regards any facts of which they may become aware in this capacity, unless the person who is being harassed waives said requirements.*

*Employees who are subject to sexual harassment have the right to be accompanied and assisted by a representative in any interviews with their employer or with the employer's representative, that take place as part of the inquiry into the sexual harassment”.*

#### THE INSPECTORATE OF LABOUR AND MINES

The ITM is one of the main authorities in charge of overseeing the proper application of legislation as regards health and safety in the workplace.

It has special authority regarding sexual harassment, so it is possible to contact them in the event of any relevant problem.

## 2. Who to contact in case of discrimination or harassment?

The main organisations to turn to in the event of discrimination or harassment are listed below.

### In case of harassment

#### CENTRE FOR EQUAL TREATMENT (CET)

As we have seen, the Center for equal treatment (CET) is competent on all matters related to discrimination, and therefore also on sexual harassment, which is assimilated to discrimination based on sex.

As mentioned above, the CET's decisions are not legally binding towards the employer or other employees.

Nevertheless, it may be useful to contact the CET for advice.

## C. DEALING WITH DISCRIMINATION RELATED TO TRANSIDENTITY

### FOCUS

Safety in the workplace

Although no case law has settled this question to date, it appears quite clear that the answer is no, if the employee in question should indeed be at risk during such a trip.

Indeed, Article L. 312-1. Al. 1er of the Labour Code provides that:

“Employers shall ensure the health and safety of its employees in all aspects related to their work”.

Within this framework, the first duty of employers is to assess and identify any risks within their company.

Article L. 312-2 (4) of the Labour Code adds:

“ [...] employers shall, taking into account the nature of the company's and/or establishment's activities:

1. Assess the risks related to the health and safety of their employees, including in the choice of work equipment, chemical substances or preparations, and in the layout of work areas. Following this assessment and according to need, any preventive measures and working and production methods implemented by the employer must: guarantee a better protection level for the health and safety for employees, be integrated into all the company's and/or establishment's activities and at all levels of management;
2. when entrusting a task to another employee, said employee's capacities as regards safety and health [...] must be taken into account”.

Can employers send a transgender person on a business trip to a country that is clearly hostile to LGBTI persons?

If any risks are identified, employers must then do their best to prevent them, or implement the least dangerous solution if there are several options.

Moreover, in accordance with Article L. 312-2. (1) et (2) of the Labour Code:

“(1) As part of their responsibilities, employers shall take all necessary measures to protect employee health and safety, including occupational risk prevention and information and training activities. Employers shall also implement all related organisation and necessary means. They shall ensure that these measures are adapted to take into account any change in circumstances and tend towards the improvement of existing situations.

(2) Employers implement the measures provided for in paragraph (1), first sub-paragraph, on the basis of the following general principles of risk-prevention:

1. avoid risks;
2. assess risks that cannot be avoided;
3. counter risks at their source;  
[...]
6. replace what is dangerous by what is not dangerous or by what is less dangerous;  
[...].”

### 3. Who to contact in case of a security breach?

#### HEALTH AND SAFETY OFFICER

In the event of a problem, it is usually possible for the employee to contact their employer or their company's health and safety officer.

Indeed, in companies with 15 or more employees, the staff delegation appoints a health and safety officer from among its members or among the other company employees (Article L. 414-14 (1)).

Articles L. 312-7 (3) and L. 414-14 (7) last sub-paragraph of the Labour Code specify that:

*"Health and safety officers have the right to ask the employer to take all appropriate measures and to submit relevant proposals, in order to mitigate any risks for the employees or to eliminate all sources of danger".*

Article L. 313-1. of the Labour Code imposes however that employees must notify the employer and/or safety officer of any hazardous situations:

*"(1) It is the duty of each employee to ensure, according to their possibilities, their own safety and health as well as that of any other persons concerned due to said employee's actions or omissions at work, in accordance with their training and with their employer's instructions.*

*(2) In order to reach these objectives, employees must, in particular, in accordance with their training and their employer's instructions: [...] immediately notify the employer and/or appointed employees and health and safety officers, of any work circumstance that they reasonably believe may present a serious and immediate danger for safety and health [...]"*



Once again employees are advised to keep documentary proof that they have indeed notified their employer of safety concerns.

Lastly, Article L. 314-1. of the Labour Code adds that:

*"Groups that are particularly at risk must be protected against the dangers that specifically affect them".*

This should in the present case apply to transgender persons.

3. Who to contact in case of a security breach?

THE INSPECTORATE OF LABOUR  
AND MINES (ITM)

The ITM is one of the main authorities in charge of overseeing the proper application of legislation as regards health and safety in the workplace.

Employees can therefore also contact this establishment in case of difficulties related to health or safety.

C. DEALING WITH DISCRIMINATION  
RELATED TO TRANSIDENTITY



USEFUL CONTACTS

<b>CENTRE FOR EQUAL TREATMENT</b> 65, route d'Arlon L-1140 LUXEMBOURG (+352) 28 37 36 35 info@cet.lu	<b>INSPECTORATE OF LABOUR AND MINES</b> L-1140 LUXEMBOURG (+352) 247 76 100 contact@itm.etat.lu	<b>GUICHET STRASSEN</b> 3, rue des Primeurs L-2361 STRASSEN
<b>GUICHET ESCH/ALZETTE</b> 1, boulevard Porte de France L-4360 ESCH/ALZETTE	<b>GUICHET DIEKIRCH</b> 2, rue Clairefontaine L-9220 DIEKIRCH	<b>GUICHET WILTZ</b> 20, route de Winseler L-9577 WILTZ
<b>THE LUXEMBOURG LEAGUE FOR HUMAN RIGHTS</b> 10-12, rue Auguste-Laval L-1922 LUXEMBOURG (+352) 621 324 546 ldh@ldh.lu	<b>LUXEMBOURG BAR ASSOCIATION</b> 2a, boulevard Joseph II L-1840 LUXEMBOURG (+352) 46 72 72 1 info@barreau.lu	<b>DIEKIRCH BAR ASSOCIATION</b> info.diekirch@barreau.lu

# Conclusion

*It is only when people feel genuinely authentic and connected to their organisation that they can truly thrive at work. Transgender employees are no exception. And yet, very few companies have managed to create an inclusive work environment for people who do not identify with societal gender norms. Employers who manage to create the right environment are not only improving their performance, they are also building a company legacy in which human dignity is a priority, and where employee well-being is considered to be a founding element of its success.*

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# BIBLIOGRAPHY

## Books and articles

Autre Cercle PACA, and ANDRH Provence,  
« **Transidentité : Quelles bonnes pratiques pour les DRH et les managers ?** »  
France, 2019

Centre LGBTIQ+ CIGALE,  
« **Gender\*Sternchen, Langage non-sexiste, inklusiv schreiben – à vos stylos !** »  
Luxembourg, 2020

Christian N.Thoroughgood, Katina B. Sawyer,  
and Jennica R.Webster.  
« **Creating a Trans-Inclusive Workplace** »  
2020

Chrysalide, France,  
« **Les transidentités et l'insertion professionnelle** »  
2011

S.E. James, J.L. Herman, S. Rankin, M. Keisling,  
L. Mottet, and M. Anafi,  
« **The Report of the 2015 U.S. Transgender Survey.** »  
Washington, DC: National Center for Transgender  
Equality, 2016

McGivan, Tom, Ceren Altincekic, and Emma  
Chatenay,  
« **Working Globally: Why LGBT+ Inclusion is Key to Competitiveness** »  
Open for Business, 2020

OCDE,  
« **Panorama de la société 2019 : les indicateurs sociaux de l'OCDE** »  
2019

Institute for the Equality of Women and Men,  
« **Guide d'accompagnement pour les personnes trans\* au travail** »  
Belgique, 2016

Whittle, Stephen, and Lewis Turner,  
« **Trans-Inclusive Workplaces: Guidelines for Employers and Businesses** »  
Transgender Europe, 2017

## Websites

**Autre Cercle**  
<https://www.autrecercle.org>

**Centre LGBTIQ+ CIGALE**  
<https://www.cigale.lu/>

**Collectif Intersexes et Alliés**  
<https://cia-oiifrance.org>

**Open for Business**  
<https://open-for-business.org>

**Transgender Europe**  
<https://tgeu.org>

**Wiki Trans**  
<https://wikitrans.co>

**Workplace Pride**  
<https://workplacepride.org>



# GLOSSARY

Created with help from the glossary in the guide: "Let's talk about sex".

## Assignment (of sex)

Defining a child's sex at birth.

## Cisgender

Opposite of transgender, a person whose their gender match their sex that was assigned to them at birth.

## Coming-out

Coming out (of the closet) is an expression that refers to the process of acknowledgement, self-acceptance, and disclosure of one's experienced sex/gender and sexuality to one's circle of family, friends or colleagues. Often assimilated to sexual orientation, coming out can also be used when referring to a person's gender identity or intersexuality.

## Gender

Social construct that is today often represented in a binary manner between men and women.

## Gender dysphoria

Mismatch between one's assigned sex, perceived gender and the perception of one's own identity.

## Gender expression

Gender expression refers to the way in which a person lives, presents themselves to others, and communicates in relation to their gender.

## Gender identity

Profound feeling of belonging to a gender. Gender refers to the roles, statuses, rights and identities associated with a sex.

## Inclusive writing

Writing that avoids gender-specific bias. For example, in English it is possible to use neutral equivalents of certain nouns ("chairperson" for example) as well as generic third-person pronouns (they/them/ themselves).

## Intersex

Intersex or intersexual persons are born with sexual characteristics that do not match the typical binary definitions of male or female bodies. Their bodies and their sex characteristics are healthy and natural variations of human sexes.

## LGBTIQ+

Lesbian, gay, bisexual, transgender, intersex, queer. The "+" sign represents all sexual orientations, gender identities or expressions.

## Misgendering

Act of designating a person by a gender that does not match their gender identity.

## Non-binary

Non-binary or genderqueer people do not identify as male or female, nor in gender binary terms, or else they identify as one gender or the other in a changing and fluctuating manner (genderfluid).

## Passing

For a transgender person, to be taken, at a glance, for a cisgender person.

## Pronouns

Used to refer to a person, they can be male (he), female (she) or other. In English, the pronouns they/them/themselves or themselves are used in the gender-neutral singular by non-binary persons. In French, there is no official neutral pronoun yet, but non-binary people might use "iel" or "al" instead of "il" and "elle".

## Sexual orientation

Sexual orientation is defined by the sex(es)/ gender(s) towards which a person is drawn or attracted to or desires.

## Trans boy/man

Boy/man whose sex assigned at birth was female.

## Trans girl/woman

Girl/woman whose sex assigned at birth was male.

## Transgenre

Lorsque l'identité de genre d'une personne ne correspond pas tout à fait ou pas du tout au sexe qui lui a été attribué à la naissance.

## Transition

Series of changes (physical, mental, behavioural, administrative, etc.) that enable a person to reduce the gap between their perception of themselves and how they appear to others.

## Transphobia

Hatred or aversion towards transgender people or transidentity in general.



# Partners



## Centre LGBTIQ+ CIGALE

*CIGALE is a professional service authorized by the Ministry of Family Affairs, Integration and the Greater Region that offers advice and support to any person who has questions about sexual orientation, transidentity, coming out and gender identity. Our services are aimed at the LGBTIQ+ (lesbian, gay, bisexual, trans', intersex, queer +) community and are open to anyone who wants to know more about sexual diversity and gender issues. Our services are divided into five main categories:*

*Support: CIGALE is a community Centre which offers a safer space for sexual and gender minorities. We offer individual counselling sessions, group and leisure activities, as well as wellbeing workshops to empower the lives of our communities.*

*Education: CIGALE is a competence Centre which offers professional training on sexual and gender diversity for the formal and non-formal education sector, for youth and*

*social workers, for medical staff, for public administrations and companies. Every year we integrate various school projects or offer awareness sessions in schools and youth centres.*

*Culture: CIGALE is a documentation and resource Centre with more than 1000 publications and books specialised in LGBTIQ+ topics. We regularly organise conferences for a wider audience, and we participate in the dissemination of queer culture by conceiving and promoting artistic activities (reading nights, exhibitions, films, theatre, etc.).*

*Rights: CIGALE is an advocacy Centre giving a voice to the struggles of the LGBTIQ+ community. We listen to the needs of our community, collect data and write reports with specific recommendations, which we submit to national authorities.*



## Centre pour l'égalité de traitement

*The Centre pour l'égalité de traitement (CET) was created by a law of 28<sup>th</sup> November 2006.*

*The CET carries out its missions independently, and its purpose is to promote, analyse and monitor equal treatment between all persons without discrimination on the basis of race or ethnic origin, sex, sexual orientation, religion or beliefs, handicap or age.*

*Discrimination on the grounds of sex includes discrimination based on a sex change.*

[www.cet.lu](http://www.cet.lu)

*Sti screenings: Every Thursday from 12:30 to 14:30, the Croix-Rouge luxembourgeoise comes to the center to do HIV, hepatitis C and syphilis screenings. Consults are free, anonymous and without having to make an appointment.*

*The centre is open from Monday to Thursday from 12 to 5PM, or on appointment.*

*Contact us by email: [info@cigale.lu](mailto:info@cigale.lu) or by phone: 26 19 00 18.*

[www.cigale.lu](http://www.cigale.lu)

# Partners



LE GOUVERNEMENT  
DU GRAND-DUCHÉ DE LUXEMBOURG  
Ministère de la Famille, de l'Intégration  
et à la Grande Région

## Ministry of Family Affairs, Integration and the Greater Region

Since 2015, the Ministry of Family Affairs, Integration and the Greater Region has been in charge of coordinating policies in favour of lesbian, gay, bisexual, transgender and intersex persons (LGBTI). Within this framework, the Ministry coordinated the drafting of the first national action plan for the promotion of the rights of LGBTI people - (LGBTI NAP). This action plan dedicates a specific chapter to the promotion of the equal rights of transgender persons, and, among other actions, it provides for awareness-raising events, training courses, guidance, support, access to care and legislative actions. This guide is one of the actions set out in the LGBTI National Action Plan.

[Plan d'action national pour la promotion des droits des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes - Ministère de la Famille, de l'Intégration et à la Grande Région // Le gouvernement luxembourgeois](#)

Luxembourg is also committed to improving the rights of LGBTI people at the EU and international levels. The Luxembourg government has signed several European and international declarations and calls for action. In March 2018, Luxembourg joined the Equal Rights Coalition, which is an intergovernmental alliance of 42 countries dedicated to the protection of the rights of LGBTI persons.

[Personnes LGBTI - Ministère de la Famille, de l'Intégration et à la Grande Région // Le gouvernement luxembourgeois](#)

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## Rosa Lëtzebuerg asbl

Rosa Lëtzebuerg asbl was founded in 1996 to support LGBTIQ people and take action on related societal issues. LGBTIQ refers to lesbian, gay, bisexual and transidentity persons - transidentity covers any person who does not identify with the sex or the gender they were assigned at birth and the roles associated with this in our society.

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Find out best practices on the  
Diversity Charter's website:  
[www.chartediversite.lu/en/](http://www.chartediversite.lu/en/)



*IMS - Inspiring More Sustainability - has been Luxembourg's leading network for Corporate Social Responsibility for over ten years. IMS explores new solutions and tests sustainable alternatives in a concrete manner, via working groups and pilot projects with positive impacts. With these projects, IMS facilitates innovative actions by mobilizing all the stakeholders from the private, public and associative sectors. IMS is an independent, apolitical non-profit -recognized as a public interest organisation- those benefits from the expertise of an agile and creative team. The network represents 16% of the Luxembourg workforce and is the national representatives of the European organisation CSR Europe.*

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