Addressing Misgendering in the Workplace

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This presentation addresses options to promote equity and does not constitute legal advice

Presentation Overview

1. Harms of Misgendering in the Workplace
2. Washington Legal Requirements
3. Policy Options -> Inclusive vs. Non-Discrimination
4. Model Policies
5. Policy Assessment Questions

Our Approach – Targeted Universalism

Targeted universalism is a social justice approach that seeks to promote equality and fairness for all while recognizing and addressing the particular needs of those furthest from justice.

Targeted universalism:

- Seeks to address systemic injustices by focusing on groups that have been historically underserved, while also providing resources and services that benefit all members of society.
- Acknowledges that some groups have experienced greater oppression and exclusion and must be provided with additional resources and support to achieve equity.
- Recognizes that any system of social justice should strive to uplift all members of society, regardless of their differences.

Addressing the harms of misgendering, while focused on the trans and gender non-conforming community, helps promote dignity and respect for everyone in the workplace by recognizing the importance of addressing people with terms that demonstrate care.

Harms of Misgendering

- Referring to individuals with inappropriate pronouns can result in feelings of disrespect, invalidation, dismissiveness, alienation, and dysphoria.
- Lack of organizational support for trans employees, which includes not addressing issues of misgendering in the workplace, is one of the central factors for predicting other negative outcomes (such as likelihood of not being promoted or being unfairly dismissed) for trans and non-binary employees (Huffman et. al 2022)
- Washington has long recognized the harms of discrimination on the basis of gender identity, laws against discrimination have been on the books since 2007.

Of the nearly 6500 respondents in the 2008 National Transgender Discrimination Survey in the USA, 26% of trans non-binary respondents and 51% of trans binary respondents reported having been mispronounced “repeatedly and on purpose” at work” (Grant et. al 2011). This finding has been replicated in subsequent studies (Ipsos 2018).

Washington Law

RCW 49.60.030

"The right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right."

Key rights included under this provision include:

"(a) The right to obtain and hold employment without discrimination;" (RCW 49.60.030)

"(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;" (RCW 49.60.030)

"To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability" (RCW 49.60.180)

Protections Under the Law

- These policies are a baseline of protections in Washington State
- Gender identity is protected under Washington law
- Individuals are entitled to safety in the workplace, including freedom from harassment and discrimination. Intentional/Persistent misgendering is a form of harassment

State Executive Orders

State HR Directive 20-03 – Every agency **must** have policies addressing the following areas:

Diversity, Equity, and Inclusion	Respectful Work Environment	Anti-Discrimination	Harassment and Sexual Harassment

Each agency must provide “A statement that lets all employees know the policy is not optional and there are consequences for not following the policy.”

Policy Types: Non-Discrimination vs. Inclusive

Compliant

- Policies that prevent employees from treating one another differently based on aspects of identity
- Sets a floor of protections, meets legal requirements but does not necessarily take steps to advance equity
- Tolerant, as opposed to inclusive

Inclusive

- Policies that focus on ensuring employees feel welcomed and celebrated for their unique identities
- Demonstrate an active commitment to helping employees feel safe to bring their authentic selves to the workplace
- Includes statements of both affirming non-discrimination principles and highlighting welcoming policies

Model Policy Example: Compliant

- “**Address individuals by their preferred pronoun (e.g., she, her, he, his, they) … when necessary**. A. A court order or legal name change is not required to honor the individual’s request. B. Documented pronouns will be used in all verbal and written communications (e.g., entries in the electronic file, correspondence, incident reports, infractions). 1) IF unsure of the correct pronoun, the individual will be asked what the preference is.”

Model Policy Example: Inclusive

- “While at the AGO, employees and members of the public are **welcome to use any room or space that corresponds with the person’s gender identity and expression without regard to the individual’s assigned sex at birth**. No gender-based requirements shall be imposed on any employee at the AGO. To the extent known or declared, individuals at the AGO shall be referred to by the name, gender designation and pronouns/non-pronouns identified by the individual. No employee at the AGO shall request documentation or other information to establish or verify an individual’s self-reported gender identity and expression.”

Model Policy Example: Promoting Inclusion

- “To achieve inclusion, we must disrupt the othering of communities and ensure respect and belonging for all. We must be willing to look at our facilities and work environment through the lens of inclusivity and accessibility (e.g., gender-inclusive restrooms, heights of countertops, accessibility of presentations, norms of communication, etc.). **We must be willing to challenge our practices and behaviors that perpetuate a patriarchal work environment and lead to gender discrimination and harassment**.” (From State HR Model Policy on Respectful Work Environment)

Successful Components of Inclusive Policy for Addressing Misgendering

Policy goes beyond just non-discrimination to include components focused on promoting inclusion

Policy specifically addresses concerns impacting the trans and non-binary community

Policy is clear and well communicated throughout the agency

Policy includes an outline of how to address violations in the workplace

Agency Recommendations

1. Review definitions of sexual harassment -> does it include protections relating to gender identity?
2. Review diversity/respectful work environment policies -> are they inclusive or tolerant?
3. Check in with your colleagues!
4. Make sure you know who to call in the event of issues relating to pervasive misgendering

Key Questions for Policy Review

1. Are there elements of the policy that could result in exclusion? If so, how?

2. What steps does the policy outline to promote inclusion? Are there additional steps that should be included?

3. Does the policy specifically address issues or questions that vulnerable communities such as trans and non-binary people may face in the workplace?

4. If the policy is well-written, is it well enacted? What steps could be taken to ensure that it is fully implemented throughout the agency?

Questions?