

# How Employers Can Promote Gender Inclusivity All Year Long

By **Lindsay Dischley and Catherine Venable** (June 29, 2022)

June — Pride Month in the U.S. — is a time for celebrating the LGBTQ community. Pride Month can also serve as an opportunity for employers to reflect on how to promote inclusivity within the workplace, and as a great foundation from which employers can proactively demonstrate their commitment to inclusivity in the workplace.

For example, employers can celebrate Pride in the workplace by bringing in speakers from within the LGBTQ community to speak to employees on inclusivity and acceptance. Employers can also partner with charitable organizations or other outreach programs that provide valuable services to their local LGBTQ community.

But as Pride Month comes to a close, employers must continue their inclusivity efforts throughout the year to truly build a welcoming working environment for all employees.

There are many benefits for companies that proactively focus on workplace inclusivity. For example, by promoting diversity, cultural awareness and an inclusive environment, companies can help prevent marginalization of certain groups of employees. This leads to an increase in morale, job satisfaction and productivity.

When employers enable all employees the freedom to authentically connect, share, contribute and support each other, it creates an environment promoting cross-functional teamwork.

Inclusive workplaces also lead to an increase in employee retention, and therefore also reduce costs associated with turnover and absenteeism. It can grow high-potential leaders and assist in attracting diverse talent.

Additionally, inclusivity efforts will foster professional development and learning through mentoring, networking, open dialogue and the free exchange of ideas.

Aside from being the right thing to do, promoting an inclusive environment also reduces the risk of facing costly discrimination claims under various federal, state and local laws.

On June 15, 2020, the U.S. Supreme Court issued a landmark decision in *Bostock v. Clayton County*, wherein the court held that the prohibition against sex discrimination under Title VII of the Civil Rights Act includes employment discrimination against an individual **on the basis** of sexual orientation or transgender status.

Moreover, New Jersey, along with several other states, expressly includes sexual orientation and gender identity or expression within its protected categories.

There are several ways employers can take steps to demonstrate their commitment to inclusivity. If employers have not done so already, they should review their benefits plans to ensure LGBTQ employees are not being discriminated against, and instead are being treated equally.



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Particularly, employers should review coverage terms to look for coverage for gender-affirming surgery, to ensure same-sex spouses and domestic partners are included in the coverage terms, and to confirm that benefits plans include employee assistance programs and related services that cover specific needs of LGBTQ individuals.

Employers should also check that employees have access to temporary disability due to gender-affirming surgery and that they have appropriate access to providers that are experienced in LGBTQ health care.

All employers, regardless of size, can take other affirmative steps to promote inclusivity without any added expense. Specifically, employers can invite all employees to include their pronouns in their email signature lines and videoconferencing handles, which would allow employees to self-identify in the way that feels most authentic to them.

If all employees include their pronouns, this also prevents any individual employee from feeling singled out.

Employers should also consider using the more inclusive pronoun "they" in communications with employees — instead of the gendered "he or she" — such as in companywide emails, employee handbooks, policies and other communications.

The gender option "other" should be avoided because it can exacerbate an employee's feeling of being isolated and treated as different compared to cisgender colleagues.

While many employers endeavor to move inclusivity forward and are taking steps to do so, there are components of the workplace that have yet to catch up. Fortunately, there are ways for employers to tackle these obstacles.

As an example, each year businesses in the U.S. with 100 or more employees are required to submit an EEO-1 Component 1 data collection to the U.S. Equal Employment Opportunity Commission. The EEO-1 form gathers data on certain employee metrics.

One field on the EEO-1 form asks companies to disclose the gender identities of their workforce. Currently, however, the EEO-1 form only has boxes for the binary male and female genders.

As more employees identify as nonbinary or gender-nonconforming, this lack of inclusiveness within the EEO-1 form options creates issues for employers. By not allowing options on the form outside of male and female, many employers inadvertently end up misgendering their employees.

To avoid misgendering, employers may designate a different gender by using the comments section on the EEO-1 form to note nonbinary gender identities. Employers should seek to represent their employees' gender identities as accurately as possible and note that employees are not required to designate a binary gender marker of male or female.

As another example, when an employee begins working for a new company, they must fill out an I-9 employment eligibility verification form to indicate that they are authorized to work lawfully in the U.S.

While the I-9 form itself asks for basic, nongendered information, such as the employee's date of birth and Social Security number, it requests the employee's identity documentation

to confirm their nationality and lawful status in the U.S.

Several of these identification documents do include gender identity with only binary options, including permanent resident cards, also known as green cards, and employment authorization documents, issued by U.S. Citizenship and Immigration Services.

The absence of identification options outside male or female on these documents can similarly lead to inadvertent misidentification of employees if employers are relying on these misleading identification documents to determine employee gender.

Additionally, requiring an employee to pick between the binary male and female genders can create an awkward and unwelcoming environment for gender-nonconforming individuals. This can harm both recruitment and retention when employees feel they are being forced to choose a gender option that is inauthentic and, at the end of the day, has no bearing on employee performance or productivity.

As more federal, state and local identification documents provide more gender identification options, employers will have a more accurate way to determine — and can be more confident in relying on — gender identity when reviewing employee identification documentation.

However, employers should be aware of the current state of the law in the locations where they have employees before assuming identification documents accurately depict gender.

Fortunately, many U.S. government entities are making strides when it comes to inclusive identity options on identification documentation.

On March 31, for example, the U.S. Department of State circulated a press release announcing that, beginning April 11, U.S. citizens will be able to self-select their gender on their passports, which will now include the "X" nonbinary gender marker.

Additionally, applicants will no longer be required to submit any medical documentation with their passport application, even if their selected gender differs from their other citizenship or identity documents.

This is a massive step forward for nonbinary and transgender individuals, who may face hurdles in updating other identity documents, such as birth certificates or driver's licenses.

Notably, the State Department is the first federal government agency that offers the "X" gender identity marker on an identity document.

These changes will have a positive impact on employers in that their employees will be more at ease during the onboarding process, confident that their identity documents accurately reflect their gender identity. This will hopefully minimize or even eliminate any awkward conversations that the employees feel they need to have with new companies to explain discrepancies when the gender on their identity documents does not match the gender they've identified on employment forms.

This will also empower employees and boost their willingness to take on work assignments requiring travel as it will eliminate the added stress of wondering what will happen when security officers and travel agents scrutinize their documentation.

Throughout the country, there has also been a recent trend toward greater gender

inclusivity on driver's licenses, one of the most common forms of identification. Beginning in 2017, the District of Columbia and Oregon were among the first jurisdictions to add a third gender option to driver's licenses, with nearly half of all states following this path and similarly expanding their gender options.

Effective June 24, 2021, New York began offering the "X" gender option on driver's licenses, nondriver identification and learner's permits as part of the state's Gender Recognition Act, which allowed New Yorkers to change the gender identity on their licenses beginning this June.[1]

By allowing a wider range of self-expression when it comes to gender identity, employers will have an easier time identifying and representing an employee's gender identity during the onboarding process and during mandatory reporting of employee demographics.

Above all else, employers should embrace that inclusivity is an ongoing process that will require continual tweaks and modifications in the workplace. By opening a dialogue at work, all employers can create a work environment that values full authentic expression, which in turn creates happier employees.

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[1] <https://www.governor.ny.gov/news/governor-hochul-announces-new-yorkers-can-now-choose-x-gender-marker-nys-driver-license-and-id>.