

hired and transgender

Self-Testing for Hiring Bias against Transgender Applicants



Office of Human Rights
DISTRICT OF COLUMBIA

Introduction

Why test your business for gender identity discrimination?

Employment discrimination against the transgender community appears to be a serious problem in the District of Columbia and across the nation. In November 2015, the DC Office of Human Rights (OHR), released the results of a resume testing project that found 48 percent of employers who responded to resumes sent by the office appeared to prefer a less-qualified cisgender¹ applicant over a more-qualified transgender applicant.² Similarly, the 2011 National Transgender Discrimination Survey found that 47 percent of people surveyed said they experienced an adverse job outcome (such as being fired, not hired, or denied a promotion) because of their gender identity.³

As more attention focuses on discrimination based on gender identity, the Equal Employment Opportunity Commission (EEOC) has made clear that it considers employment discrimination against the transgender community to be a form of sex-based discrimination, and is pursuing claims accordingly. Furthermore, many state and local legislatures have adopted anti-discrimination laws that explicitly protect the transgender community from employment discrimination.⁴ Given the high rates of reported discrimination and increased enforcement activity, employers are encouraged to take proactive steps to:

1. test their hiring process for discrimination based on gender identity to determine whether transgender applicants are treated fairly, and
2. build a workplace culture that is friendly and welcoming to the transgender community.

This guide will provide employers step-by-step instructions for testing whether discrimination against transgender applicants may be occurring during the application review stage of the hiring process. For best practices on how to build a transgender-inclusive workplace, read *Valuing Transgender Applicants & Employees: A Best Practices Guide for Employers*,⁵ which was released in June 2016 by OHR and the National LGBTQ Task Force.

Ensuring all applicants and employees are treated with dignity and respect — including transgender applicants and employees — leads to a more productive, creative and happy workplace.

1 “Cisgender” describes a person who expresses as and identifies with the gender they were assigned at birth.

2 For determining rates of discrimination, only tests where one or more applicant(s) received a response were considered. This is in-line with best practices on correspondence testing. The complete findings are available at ohr.dc.gov/page/QualifiedAndTransgender.

3 Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

4 Per the National LGBT Taskforce (www.thetaskforce.org), states with explicit employment discrimination protections based on gender identity or expression, as of May 2016 (19 states and the District of Columbia): Minnesota (1993), Rhode Island (2001), New Mexico (2003), California (2003), District of Columbia (2005), Illinois (2005), Maine (2005), New Jersey (2006), Washington (2006), Iowa (2007), Oregon (2007), Vermont (2007), Colorado (2007), Connecticut (2011), Hawaii (2011), Nevada (2011), Massachusetts (2011), Delaware (2013), Maryland (2014), Utah (2015).

5 *Valuing Transgender Applicants & Employees* is available at ohr.dc.gov/page/transemployees.

Steps to Conduct Testing

Step 1: Understand Application Review Procedures

Review how employment applications are submitted to, and then received, processed, and considered by your business. Many proactive employers have taken steps, whether manually or through specialized software, to remove information from employment applications that could trigger unconscious biases in hiring personnel. Examples include redacting applicant names and addresses, as these can signal race, national origin, or gender.

Similarly, an applicant's gender identity can be revealed on their application through their name (which may include both a legal and preferred name), or through previous work or volunteer experience (which may include a transgender-focused organization). As long as either the name of the applicant or the names of previous employers or volunteer jobs are not redacted before the application review phase, you can conduct the resume test.

Step 2: Identify an Appropriate Job Opening

Identify the open position(s) you would like to use for the testing. Check that a specific candidate, internal or otherwise, is not being strongly considered for the posting, so there is a realistic expectation that your applicants will be contacted for interviews.

Step 3: Determine the Size of the Test

Decide how many applications you will submit for each position, keeping in mind you should submit an equal number of test (transgender) applications and control (cisgender) applications. The more applications you submit, the more results you'll have to evaluate at the end of the test. It is suggested that at least four applications be submitted for each position: two test applications, and two control applications.

Step 4: Choose Gender Identity Signals

Decide how you will signal gender identity in the test applications. Gender identity can be signaled in multiple ways, including the following:

1. Pairing a gendered preferred name with a gendered legal name of the opposite gender.

Example: Mary (Mark) listed as the applicant's name at the top and signature of the cover letter, the top of resume, and in the application.

2. Including work or volunteer experience at an organization that is connected to gender identity issues. The work/volunteer history should be related to the job duties of the position applied for so there is a reasonable explanation for including it in the application.

Example: In the cover letter, "Lastly, I have prior experience as a receptionist at the National Center for Transgender Equality where I demonstrated my ability to direct visitors and calls. I put these skills to use for my personal interest in the cause of transgender rights and equality."

Using one signal per test applicant may prevent hiring personnel from detecting the test (ie, not making the gender identity too obvious). It is recommended that all application materials for each test applicant (resume, cover letter, and online application, as applicable) contain the signal for gender identity to ensure the signal is seen by hiring personnel.

Step 5: Setup Contact Emails and Phone Numbers

Using free services such as Gmail and Google Voice, create unique email accounts and phone numbers for each applicant so you can track phone and email responses to your applications.

Step 6: Draft Convincing Applications

Using knowledge of your company's ideal candidate and the requirements from the job posting, draft all application materials for the control and test applications, making sure that all applicants are fully qualified for the position. Test applicants should have more experience and, if GPA is requested, should have slightly higher GPAs than the control applications. In all other respects, the

applications should be as similar as possible. For example, if the test applicant has signaled gender identity through volunteer experience at an organization that is connected to gender identity, the control applicant should have similar volunteer experience but at an organization that is connected to a different issue. However, the control applicant should not be assigned experience that signals a different trait, such as religion or political affiliation, that may be protected from discrimination under federal or local law. More neutral options include volunteering at a food bank, animal shelter, homeless shelter, or Habitat for Humanity. Make sure the volunteer duties of the test and control applicants are kept almost identical.

Examples:

Test applicant: "I served as the volunteer leader of a campus support group for transgender women."

Control applicant: "I volunteered as the facilitator for a women's support group at my university."

Step 7: Ensure Control and Test Variables are Correct

Once all application materials are drafted, double check that:

- all gender identity signals are present and consistent throughout the materials;
- test and control applicants do not significantly vary in terms of age, race, residence, and place of education; and
- test applicants are slightly more qualified than control applicants in any or all of the following categories:
 - work experience (length and/or type)
 - GPA
 - level of education
 - all application materials are free of typos and grammatical errors.

Step 8: Submit Applications

Submit all test applications, followed by control applications. If you anticipate a large number of applications for the position, space the test applications one day apart. If you anticipate a small number of applications, space the test applications two or three days apart. It is important to submit the test applications first, to ensure another factor is not responsible for a lack of response to the test application, such as the position closing or reaching the maximum number of applications accepted.

Step 9: Track and Record Responses

Track and record all responses to your applications. Once you know that all interviews have been scheduled for the position, evaluate the responses you received. If a less-qualified control applicant has been contacted for an interview and a more-qualified test applicant has not been contacted, bias based on gender identity is a possible explanation. Remember, the more test applicants that are passed over in favor of control applicants, the stronger the possibility that bias based on gender identity is the explanation.

Step 10: Address Potential Discrimination Issues

If you detect potential hiring bias, don't panic - you've just taken the first step towards building a more fair and friendly workplace! Take the next step by discussing your findings and determine how to move forward with the relevant hiring personnel. You can invite expert trainers to lead discussions and conversations on gender identity with your staff, distribute information at a local LGBTQ Pride event, and otherwise explore ways to make your company more transgender-friendly and aware. "Valuing Transgender Applicants and Employees: A Best Practices Guide for Employers," released by OHR and the National LGBTQ Task Force, provides information on ensuring transgender applicants and employees are treated fairly, and it is available at ohr.dc.gov.⁶ Remember, the best defense against discrimination is education: the more you and your employees know about the transgender community, the more welcoming and friendly your workplace will become.

⁶ Imse, Elliot, and Victoria M. Rodríguez-Roldán. Valuing Transgender Applicants and Employees: A Best Practices Guide for Employers. Washington: District of Columbia Office of Human Rights and National LGBTQ Task Force, 2016.

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