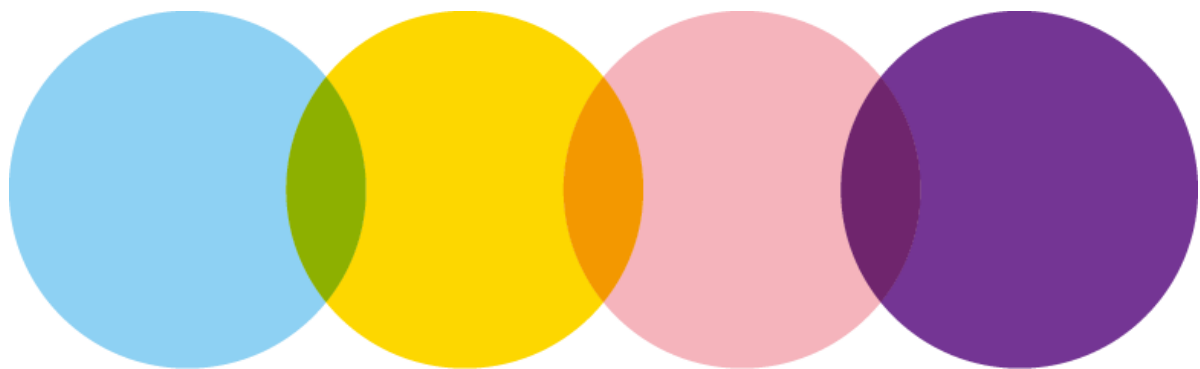


INCLUSION4ALL:

Training toolkit for transgender,
intersex & non-binary employees



INCLUSION **4** **A** **L** **L**

TRANS, INTERSEX AND NON-BINARY PEOPLE AT WORK

Title: **Inclusion4All: Transgender, Intersex, and Non-Binary Training Toolkit**

Authors: **Lis Dekkers, Freya Terpstra, Wesley Larsen**

Publisher: **Transgender Netwerk Nederland (TNN)**

Date: **July 2022**



This publication was produced as part of the project, Inclusion4All: Trans, Intersex and Non-binary people at work, co-funded by the European Union's Rights, Equality and Citizenship Programme (2014-2020).

The content of this publication represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.



This publication may be downloaded free of charge from inclusion4all.eu.

Table of contents

Introduction	4
1. Knowing your rights	10
2. How to: responding to discrimination at your job	14
3. How to: responding to discrimination in recruitment	20
APPENDIX	26
Training module examples	26
Evaluation criteria examples	27
Literature	27

If you have any questions about this toolkit or its contents, feel free to email TNN at info@transgendernetwerk.nl

Introduction

This toolkit is a product of the Inclusion4All: Trans, Intersex, and Non-Binary People At Work project, co-financed by the European Commission under the Rights, Equality and Citizenship Programme. This training toolkit is meant for international use and has been produced with knowledge and insights gathered by the European Inclusion4All consortium partners from the Netherlands (TNN), Hungary (Háttér), Spain (SURT Foundation), Croatia (Zagreb Pride), and Italy (University of Brescia).

Disclaimer: This toolkit is to be used as a guideline for training on the topic of creating inclusive workplaces for transgender, intersex, and non-binary people. Due to the low number of intersex respondents to the Inclusion4All surveys (in conjunction with a general lack of research into workplace-related needs of intersex people), the parts on intersex inclusion in this toolkit are unfortunately more limited than those on transgender- and non-binary inclusion. This shines a light on that more funded research into—and more general awareness of—the needs of intersex people is needed.

Trans, intersex, and non-binary employees continue to disproportionately experience workplace discrimination, including in the field of recruitment. The recent Inclusion4All research, funded by the European Commission, further establishes that this is the case in many of the European Union's member states. This toolkit is intended for trans, intersex, and non-binary people and trainers, and aims to provide practical assistance to help improve their position at work, through information and exercises.

In chapter 1 of this toolkit, we discuss different forms of discrimination in the workplace and some basic terms to better understand it. Additionally, we discuss the responsibilities and duties of the employer here, as well as laws in place to protect people from workplace discrimination. In chapter 2, we discuss how to best respond to discrimination in the workplace and outside of it. This includes which organisations or people one could turn to, as well as how to best handle the reporting of a discrimination case, generally. Finally, in chapter 3, we discuss how to best respond to or anticipate recruitment-based discrimination. This includes how to recognise such forms of discrimination and how to be ahead of it if possible.

A. Learning Objectives

- Knowing what rights you have as a transgender, intersex, and/or non-binary worker or jobseeker and how to enforce those rights
- Knowing what constitutes work-based discrimination and how to best recognise each form so as to better anticipate them
- Knowing how to best respond when becoming a victim of discrimination, such as how to report it and to whom
- Knowing where responsibilities lie in dealing with discrimination in the aftermath
- Knowing how to anticipate and respond specifically to recruitment-based discrimination and what different forms it might take.
- Knowing how to best approach a job interview regarding the potential disclosure of your identity and/or preparation of your CV.

B. How to use this toolkit

This toolkit is meant for trainers as a foundation for their own individual training design. Every chapter consists of knowledge to share, as well as case scenarios to practice the information. Bringing the scenarios to life can aid the training process, and will help you to show trainees the need for policy.

The toolkit can be used in any particular order. We recommend using the practical scenarios in between more general discussions on the topic. The toolkit should function as a jumping-off point for you to create your own training module. The most important parts of the training are the scenarios, which can help people to better imagine themselves in any given situation and practice potential responses in a practical way. For trainees to be most likely to understand what to do in these practice scenarios, they should be given tools and a basis beforehand.

Considering the sensitive nature of the topic of inclusion, it is important to be respectful towards the trainees. As a trainer, you should create a space where everyone feels free to speak up and share their personal experiences and/or backgrounds. However, this should not be compulsory. Any and all discussions should be based on mutual respect.

C. Methodology

As this toolkit is a part of the international Inclusion4All project, knowledge from the project's research stages has been used in the production of this toolkit. This research primarily involved two online surveys:

- 1) one survey to find the needs of trans, intersex, and non-binary people within all partner states' job markets, as well as their experience with (un)employment and workplace discrimination.
- 2) one survey to ascertain the affinity of HR professionals with inclusive policy, their knowledge of- and attitudes towards trans, intersex, and non-binary people's inclusion in the workplace. The online surveys were primarily conducted during the period of March-July of 2020.

These surveys were translated and disseminated nationally among all five European consortium partner states so that differences between job-market inclusion per country would become apparent. The quantitative research of these surveys was also supported by a series of in-depth interviews with both HR professionals and trans, intersex, and non-binary people to go into further detail about the above-described research questions. In both the interviews and surveys, people were also asked for their training needs.

This research, supported by prior research and insights by the Dutch national transgender and non-binary advocacy organisation Transgender Netwerk Nederland (TNN) forms the basis for the contents of this toolkit. A further literature study was performed by members of TNN to round out the body of content that you can find in this toolkit.

D. Inclusion4All research results

Before diving into the content of this toolkit, there are some general results from the Inclusion4All research that are important to note as a context for those who intend to provide training with this toolkit in mind. These are summarised here briefly.

Disclaimer: The full reports on the Inclusion4All research results can be found on the project's website www.inclusionforall.eu. There, you can find the national reports detailing the findings in each consortium member's countries, as well as a comparative report summarising and analysing these findings as a whole.

Note: Because the number of intersex people that participated in the survey was very low, it was not possible for us to properly assess the needs of that demographic in our findings.

(Un)safe workplaces

The majority of experiences among transgender, intersex, and non-binary interviewees and participants of the research point to a significant problem, namely that the work environment is not a safe or inclusive place for them. The most common causes cited by

participants are a lack of knowledge, ignorance, prejudice, stigma, and engrained cis-heteronormative mentality.

This widespread lack of workplace inclusivity seemed to reveal itself in several common obstacles that transgender, intersex, and non-binary participants encounter(ed) when working or looking for a job. For example, the occurrence that one's name or gender does not match those on official documents (a situation which prevents some from even applying for a job or transitioning at work), a lack of inclusive bathroom policies and facilities, a lack of inclusive language at the workplace, being singled out as 'different', a pervasive fear of hostile reactions or being seen as "sick", and the burden of continually explaining one's 'status' was often mentioned by participants.

Anti-discrimination policy

Additionally, HR and/or employers failing to act in cases of discrimination was another problem frequently mentioned by participants during the research—something which was also found to be an issue in the data of the surveys. The data from both the surveys and interviews suggest an inadequate level of anti-discrimination policy, in general, and a low grade of such policies being enforced by the company. However, a correlation could be seen between the adoption of D&I policies in the company and the positive experiences of transgender, intersex, and non-binary people at those workplaces. Where these policies were adopted, even if incomplete or partially inadequate, there was still dialogue happening to improve or implement appropriate measures.

Training goals

Regarding preferred methods of training for transgender, intersex, and non-binary participants, the response was split. Some respondents expressed a preference for in-person training over training via digital media because it would allow for a closer relationship between participants and/or trainer(s). However, to provide the possibility for higher participation among the target demographic, digital training, or a hybrid solution could also be considered appropriate.

E. Glossary of terms

We may use certain terms you are unfamiliar with throughout the toolkit. These terms may describe particular demographics of LGBTQI+ people, social phenomena, or specific forms of inclusive policy. If you don't already know all of these terms, it is advisable that you make sure you understand them before delving into the more practice-related content of this toolkit.

Sexual orientation: whether a person is sexually or romantically attracted to persons of the same gender, to persons of a different gender, or persons of any gender.

Gender identity: refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex that person was assigned at birth.

Gender expression: refers to a person's outward presentation of their gender identity (e.g. behaviour, mannerisms, dress). Gender expression may or may not be in line with a person's gender identity. Gender expression also includes a person's choice of pronouns.

Sex characteristics: a person's physical traits, indicative of their biological sex; they include primary sex characteristics (chromosomes, gonads, sex hormones, genitalia) and secondary sex characteristics (breasts, body hair, body form etc.).

The gender binary: refers to the 'traditional' classification of gender as consisting only of masculine and feminine, whether by a social system or cultural belief. Most cultures use a gender binary, recognising two genders (men/women). However, this is often a glaring oversimplification of both gender and biological diversity as it often ignores the existence of intersex and non-binary people.

Intersex: a variation on the (reductive) norms that determine whether someone is from the male or female sex. People with an intersex status do not fit these norms, since their sex characteristics (chromosomes, genitalia, sex hormones, etc) differ from the binary norm. However, being intersex does not necessarily mean that you do not identify as 'man' or 'woman'.

Transgender/trans: is an umbrella term referring to people whose gender identity and/or gender expression differs from the sex they were assigned at birth.

Cisgender: a term referring to people whose gender identity corresponds with the sex they were assigned at birth.

Non-binary: an umbrella term for all who don't identify as (just) female or male. Though there are many kinds of non-binary identities, some people identify as "non-binary" only.

Transition: the process of changing one's gender expression or sex characteristics to be in accordance with one's gender identity. This may or may not include medical interventions such as hormone replacement therapy or surgery. Each transition is different; just as people are.

Outed: to reveal the sexual orientation, gender identity, or intersex status of another person, usually without their consent.

LGBTI+: lesbian, gay, bisexual, transgender, and intersex, an acronym to refer to sexual and gender minorities in general.

Transition leave: a transition leave is granted to people who are absent during (parts of) their transition. Due to medical appointments, psychological support, or personal reasons, people can be temporarily absent. To make sure that they have access to time off without

the unnecessary use of sick leave (since they are in fact not sick), special leave can cover their absence.

Anti-Discrimination Agency: an organization where you can file a discrimination complaint. The agency will advise and support you in dealing with the issue, and can for example mediate with the person who has discriminated against you or help you to start a legal procedure. Filing a complaint can often also be done anonymously.

Old name [or deadname]: a name used by someone prior to their gender transition, for example by being given to them at birth, which is now no longer in use. The use of an old name can evoke powerful negative emotions in the person who has gone to lengths to leave it behind them. It is sometimes referred to as a 'deadname'.

Gender dysphoria: a term used to describe the feeling of unease or discomfort one might feel stemming from a mismatch between aspects of one's body (such as sex characteristics) and their gender identity. Gender dysphoria comes in many forms and levels of severity. Though often equated to being transgender, not all transgender people necessarily experience severe gender dysphoria.

1. Knowing your rights

What is discrimination?

Discrimination, in the broad sense, is the 'unequal treatment, disadvantage, or exclusion of people on the grounds of characteristics that are not relevant in a situation'. For example, if someone is not hired because they are non-binary, this is discrimination on the basis of gender. Making a distinction between people is not illegal per se. People are allowed to treat unequally if there is an objectively good reason, such as a need for experience. If someone is not hired because they do not have any relevant work experience, this is exclusion based on relevant characteristics, and therefore not discrimination.

To unfairly treat a person based on a characteristic of theirs that is irrelevant to the situation is called *direct discrimination*. For such discrimination to legally be classified as such, the characteristic that is discriminated upon needs to be a 'protected characteristic' (meaning it is stated in national or international law that one can not be discriminated upon grounds of that characteristic). Protected characteristics may include race/ethnicity, gender identity, sexual orientation, disability, age, religious conviction, relationship status, et cetera.

However, there is also discrimination that is often less visible. While direct discrimination occurs from the treatment of one person by another, *indirect discrimination* occurs when a law/rule/requirement that appears to be neutral for everyone, in fact, disadvantages some groups in particular because they share a particular characteristic. For example, the absence of wheelchair accessibility in a workplace might fall under indirect discrimination. Similarly, requiring all employees to periodically work on Sundays might fall under indirect discrimination as it disadvantages employees with certain religious convictions who within their religion are not allowed to work at those times. It is hard to accurately estimate how many transgender, intersex and non-binary people experience discrimination at the workplace. Not everyone who is discriminated against also reports it. Often, victims do not report cases of discrimination due to either fear of retaliation or mistrust of the systems in place, for example.

It is important to remember that it is not the responsibility of the victim to tackle discrimination. Though it may fall on the victim to report discrimination, employers and government or judicial institutions are tasked with tackling the discrimination case and providing a fitting solution.

A. Your rights

Discrimination in the workplace and the labour market is prohibited in the Netherlands. This means that individuals, the government, and organisations are not allowed to reject, deprive, or make distinctions between people based on certain protected characteristics unless these characteristics are relevant to the situation. Legally, these regulations are stated in the first article of the constitution [*Artikel 1 van de grondwet*], and enacted in the Equal Treatment Act [*Algemene wet gelijke behandeling, Awgb*]. In order to specify the regulation, and to make it useful, there are several grounds that are protected from discrimination. For example, according to Artikel 1, people are not allowed to discriminate on gender. What this means exactly is discussed in the Awgb. Since November 2019, the characteristics of gender identity, gender expression, and sex characteristics are protected under the broader ground of 'gender' in the Awgb. In other words; transgender, intersex, and non-binary people are protected from discrimination since discrimination based on gender is prohibited.

A second important right is discussed in the Arbowet. This law states that employees have the right to a safe workplace environment, which includes protection against bullying and discrimination. More on that in the next section.

B. Your employer's duties

In short, employers have two kinds of duties. First of all, employers have the duty to not discriminate against their employees based on protected characteristics. Second of all, employers have to create a safe workplace for all their employees. In this part, we will explain in more detail what these duties mean.

Businesses, workplaces, and other organisations are directly mentioned in the Awgb. This means that employers have to follow the regulations discussed in the Awgb. Making distinctions between people based on protected characteristics is thus not allowed. Employers are therefore not allowed to discriminate in hiring and firing, promotions, etc. As an employee, this regulation protects you from discrimination from your boss and/or superiors.

Employers also have a duty to prevent that others discriminate against you at work. Following the *Arbeidsomstandighedenwet* [Arbowet], the Dutch law that dictates the responsibilities of employers for workplace safety, employers have to make sure that their employees can work in a safe environment. This not only means physical safety but also includes the prevention of '*psychosociale arbeidsbelasting*' [psychosocial workload]. Under this term, all burdens of a mental or social nature on employees are included. This means that negative aspects such as discrimination, bullying, intimidation, violence, or sexual

aggression, which have negative consequences on an employee's mental health, are seen as harmful to an employee's workload. Therefore, the employer has to prevent or minimise these threats to employees' mental health.

If you experience discrimination or bullying at work, your employer is legally obliged to support you in this issue. They have to make sure that there are systems in place that prevent these situations, and if they occur, tackle and minimise them. In short, your employer is obliged to help you. Usually, this is done through policies created by HR [Human resources] and a 'vertrouwenspersoon' [counsellor/assigned confidant]. More on this in the next chapter.

Practice: Announcing a transition

Scenario: After deliberating for months, Aiden decides that they want to announce at their company that they are amidst a gender transition. However, Aiden is unsure of where to start. All but one close colleague has yet to notice any changes. How could Aiden tackle this announcement at their work?

Discussion questions:

- What are the benefits of announcing your transition to your employee and/or colleagues?
- What are the possible drawbacks of announcing your transition to your employee and/or colleagues?
- Who would you tell, if anyone at all, and with who would you start?
- What would you need from HR or your employer in this process?

Facilitator: Dos and Don'ts

Do's

- It might be preferable to start with someone you know you can trust with this personal information who also has the power to help you with a smooth transition. Oftentimes, that might be someone in HR or a counsellor.
 - The benefit of this might be that your employer or someone from HR can support you when you are ready to tell people within the company more widely, if at all.
- Suggest setting up a transition plan with HR if you think that might help in your situation. This might ease the process for all involved.

Don'ts

- Assume that the information that you tell colleagues will stay strictly confidential. Instead, explicitly ask them to treat this information as confidential.
- Assume that the burden of informing others, if necessary, should only rest on you. Others within the organisation, such as HR can help in this endeavour.

Practice: Pressured to leave the company

Scenario: Jenn works at a construction company. When she discussed that she wanted to transition, her boss said that it would be best for her to stop working at the company during her transition. Jenn's boss noted that she might be able to return after 'concluding' her transition, but that there was no space for her at this particular time. What can Jenn do?

Discussion questions:

- How do you think Jenn could best respond to her boss?
- What do you think Jenn's options are for support in this situation?
- What do you think Jenn's legal footing is in this case?

Facilitator: Dos and Don'ts

Do's

- Be aware that being forced to quit due to wanting to transition is both highly discriminatory (and likely illegal) on the end of the employer, but also a hostile situation. Your safety comes first and legally tackling this transgression by the employer might take great effort. However, if your country has national anti-discrimination laws which include gender identity, it is likely that you have a solid case against your employer.
- Try to manoeuvre this conversation to email or other written media. If the recruiter/employer repeats via text that your gender identity or intersex status were involved in asking to you step down, you then have that as evidence for a possible complaint or case.
- Consider if you would even want to work at the company after being treated this way.
- Inform yourself of the national anti-discrimination laws. Seeing as this is a discriminatory action by the employer, you could be eligible for severance pay for example, depending on where you live.
- Contact an anti-discrimination agency. They can offer support and advice, as well as support you if you want to make an official complaint or start a case against your employer. Receiving outside support can help greatly, also for your mental health.

Don'ts

- Do not carry the burden of this situation alone. Inform HR of the situation your boss has put you in and seek the help of a counsellor or outside organisation if you want.
- Do not assume that this is a normal request from your boss.

2. How to: respond to discrimination at your job

If you have faced discrimination, the last thing you might want to do is discuss this experience in detail. However, reporting discrimination can be very useful, both for you and for other people in your position! First of all, by reporting and challenging the situation, you can get support, and try to find ways to prevent the discriminator from continuing their behaviour. Second of all, reporting can help others. Every year, anti-discrimination agencies (and often organisations internally too) report on the current state of discrimination. This information is used by the government as a basis for its policy against discrimination. If more people report discrimination, it is more visible to the general public and can influence new laws and regulations.

If you have faced discrimination, you have different options. There are different institutions that you can report to, and these institutions have different expertise and support options. What place suits you best depends on your situation, and on your goal of reporting. In this chapter, we will provide an overview of the different organisations, and of their benefits.

NOTE: Unfortunately, proving that you have been discriminated against can be hard to do. Words said or questions asked can not be used in a court or legal battle in the same way that written statements or questions can be. As such, if you fear falling victim to discrimination and see a way to get written evidence of it, be sure to take it. For example, in the case of being forced to step down from your job after announcing a gender transition, it might be advantageous to have that discussion with your employer via email.

A. At work

If you experience unpleasant situations at work, there are specific colleagues that can offer you support. The most important person is the counsellor [*vertrouwenspersoon*]. This employee is tasked with handling complaints and conflicts at work. If you face a situation that can lead to *psychosociale arbeidsbelasting*, such as discrimination or bullying, you can report this to the *vertrouwenspersoon*. The role of a counsellor is to be a first point of contact for you. They can help you in your situation, and advise you in taking steps to stop the situation. For example, filing an official complaint, or receiving support from them. Contacting a mediator to help you in your conversation with the person who has discriminated against you, is also one of their possible tasks. Lastly, counsellors help your employer to prevent harmful situations. Informing them of these situations can therefore also help them in their conversations with managers since they are more aware of what obstacles you face.

Conversations with your counsellor are confidential. They are not allowed to discuss your information without your permission, and they have to follow your wishes. It is possible that they can report on your situation anonymously. However, this will be done in a way that cannot be traced back to you.

Human Resources is also relevant in this situation. The role of an HR professional differs strongly per organisation. Usually, HR professionals are tasked with the executive aspects of employers. What aspects of their job have their focus is dependent on the focus of the business or employer. Some HR professionals are mostly focused on hiring new employees, for example, those in start-ups. Other HR professionals can have a strong focus on diversity, equity and inclusion, for example, those in larger corporations. Usually, HR professionals make policies that aim to create a healthy workspace and prevent unwanted situations.

B. Outside of work

If you experience discrimination outside of your job, there are other places that can support you. It is also possible that speaking to your counsellor at work is insufficient. For example, if they do not see an issue, or if an internal complaint that was filed by them does not change things. In these cases, you can contact special anti-discrimination agencies. These organisations are tasked to prevent and deal with discrimination.

An anti-discrimination agency [*anti-discriminatievoorziening, ADV*] is an independent organisation that is tasked by your municipality [*gemeente*] to deal with your discrimination case. Local government is legally obliged to provide an anti-discrimination infrastructure for citizens to make complaints. The offices can then mediate with a complainant to address the discrimination at hand and find a non-judicial, out of court, solution. Next to reporting your case here, the agency can advise you if you want to take further steps. They can help you by acting as a mediator between you and the person who has discriminated against you. If mediation does not lead to a good solution, an ADV can help you to bring your case to court for a ruling by a judge, or to a ruling by the Human Rights Council, the *College voor de Rechten van de Mens [College]*. Lastly, if you do not want to make a case or get assistance, you can also report anonymously. This way, you will not be able to get a ruling, but you can help to improve the visibility of discrimination since anonymous reports are included in the yearly report. ADVs work based on your home address, but it does not matter whether the instance occurred in your hometown or not. If you have tried to report your case at your job, but it is not handled sufficiently, you can also report it again at an ADV.

If you want to start a court case, one place to do so is the College. Another option is to take your case to the College. The main function of the College is to give verdicts on discrimination cases. The College functions as a judge, but without the power that a regular judge has. In their rulings, they base themselves on the law, and case law. Getting a ruling is free, but a

ruling is not legally binding. This means that the defendant (the party that is accused of discriminating against you) can ignore the ruling. However, the College estimates that 80% of its rulings are followed by defendants. You can also use this case as a basis to then go to a different judge. Furthermore, when the rulings are made public, the organisation that has discriminated is named.

If you want to discuss your situation with, or report to an organisation specialised in transgender and/or non-binary people, you can also file a report at TNN. This can also be done anonymously. If you want to make a case or receive mediation, TNN can share your report with your local ADV. At this time, there is no specific place to report discrimination against intersex people. If you are intersex, you can use the regular institutions.

C. Non-work related

Next to these organisations, there are also some that you cannot contact to report discrimination at work. You can contact them about other forms of discrimination, for example when you have experienced violence, or when you are a victim of online discrimination. In these cases, you can contact the following institutions in addition to the aforementioned ones.

Police

Within the police, there is a network of police officers who are part of Roze in blauw. This is the employee group for LGBTI+ officers, and they can help people who want to file a report. When contacting the police, you can ask to be helped by a member of Roze in blauw.

MiND

Meldpunt Internet Discriminatie (MiND) is a place to report the discrimination that you experience online. For example, if you have received discriminatory remarks on social media, you can report these at MiND. MiND can contact the platform where the discriminatory remark is made, and ask them to delete it. If this does not work, they can start a case at the *Openbaar Ministerie* [Public Prosecution Service].

Practice: Consistent misgendering

Scenario: Charlie is a non-binary employee at a software development company. A few months have passed since they began their transition and while most of Charlie's coworkers have been accepting, one coworker in particular continues to deliberately misgender them and call them by their previous name. Although Charlie initially wanted to give their coworker the benefit of the doubt, thinking that perhaps the coworker was struggling with proper pronoun-use, they now feel they are being purposely misgendered. What steps should Charlie make to tackle this situation?

Discussion questions:

- Who should Charlie approach in particular to discuss this issue?
 - Should Charlie file a complaint?
- Do you think there are ways that the situation could escalate?

Facilitator: Dos and Don'ts

Do's

- Do not approach the misgendering colleague directly if you feel that the misgendering is purposeful and with the intent to hurt. Instead, it may be better to lay the situation out to HR, voicing your concerns of the intentionality of the misgendering, and letting them handle the situation.
- If your company has an anti-discrimination policy in place regarding misgendering, simply refer to that policy instead of getting into debates around intent or how to achieve proper pronoun-use in the workplace.
 - If your company does not have a policy or guideline of action regarding discrimination in the form of misgendering, advise them (for example HR) to create it.

Don'ts

- Do not feel as though you would need to tackle this situation alone. If your colleague would be misgendering you with the intent to harm, it is very unlikely you can resolve the issue privately.

Practice: A bathroom complaint

Scenario: Eva, a cisgender female employee, and Michelle, another female employee who is a trans woman, both work at a private banking company. Eva is upset that Michelle regularly uses the women's restroom next to her office. Eva feels that because Michelle has not 'completely transitioned', she should not be treated as a woman and not be allowed to use the women's bathroom. She complains to the head of the department about "that man in the bathroom." How should Michelle approach this situation?

Discussion questions:

- Should Michelle take a proactive stance, by stepping to HR for example, or a more responsive stance, waiting for the head of the department to solve this issue for example, or another stance entirely?
- Should Michelle want to start a conversation with Eva?
 - Either privately or mediated by HR, for example?

Facilitator: Dos and Don'ts

Do's

- Involve other people within your company who can offer support such as HR or counsellors. It is unlikely that the hostile environment created by Eva can be solved without outside intervention.
- Try to get help from your managers or other influential people in the organisation. Setting the norm that this is an inclusive organisation and that you are supported can help to weaken Eva's position.
- Eva making assumptions about Michelle's private parts is not only extremely rude, it might also amount to a violation of workplace privacy. Additionally, surgery is not something that you have to disclose to your co-workers. Check what your organisation's policies regarding privacy are to this end.

Don'ts

- Try to privately resolve this matter with Eva. It is likely to be a battle you cannot win alone.
- Do not assume this is an isolated incident. Other intolerant colleagues might speak up to support Eva if this case is handled too publicly.
- Get into a discussion of when someone is 'woman'/'man' enough. Instead, dismiss the question as offensive and highly unprofessional, which it is.
- Do not settle for using a gender neutral restroom from now on. These restrooms are not special restrooms for transgender, intersex or non-binary people. You should use the restrooms you wish to use.

Practice: Prying questions at work

Scenario: Benjamin is a trans man who's recently been hired to work in a position at a private company. He feels quite welcomed and at ease within the organisation. One month into the job, Benjamin is suddenly asked by his employer in private if he is transgender. How should he respond?

Discussion questions:

- Why might you disclose your transgender status? Or why might you decide to keep it private?
- What are the possible pros and cons of revealing versus concealing and vice versa?
- Does this question of your employer change your level of comfort within the organisation?

Facilitator: Dos and Don'ts

Do's

- There is no one universal answer, as each scenario is individualised. It is contingent upon whether or not you feel comfortable disclosing this part of yourself.
- If you do decide to disclose, you can articulate your trans identity in a matter-of-fact way.
- You could also redirect and refuse to answer. Alternatively, you could note that the question is invasive of your privacy, which is a very valid reason to not answer it.

Don'ts

- If you do not wish to answer, do not respond defensively. Instead, simply indicate that that is not an acceptable question.

3. How to: respond to discrimination in recruitment

While we often know immediately when we are being discriminated against, some forms of discrimination might be less noticeable at first. Facing discrimination in recruitment might be one such form of less visible discrimination. This might be due to multiple factors. For example, a recruiter or employer can give ulterior reasons for not accepting people for a job position, while in fact, it is their being transgender, intersex, or non-binary that was a factor in that decision since that is illegal. Alternatively, a company might not even provide any specific reasons for rejecting someone for a job position, instead opting to send out automated messages to applicants.

Though discrimination in recruitment might be hard to prove as a job seeker, there are ways that you can recognise potential discrimination during the application- or interview process.

In this chapter, we will briefly discuss the laws and guidelines regarding discrimination in recruitment (what is legally permissible and what isn't), the ways that you can potentially recognise it, and how to strategically approach this topic if you are seeking a job as a transgender, intersex, and/or non-binary person.

A. Laws and guidelines

Within the Dutch context, an employer may give preference to particular applicants or groups of applicants in the case of equal suitability for a position. This often amounts to what is called *positive discrimination*.

Positive discrimination might entail, for example, that a company chooses to hire a woman in the case of equal suitability for a job position if the company has significantly fewer women than other gender identities at work in the company. The Dutch preference policy for positive discrimination theoretically extends to all marginalised groups of people, such as transgender, intersex, disabled, people of colour, et cetera. Only in cases where there is a significant lack of a particular group working within the company is positive discrimination during recruitment allowed.

Furthermore, employers are allowed to choose not to hire disabled or chronically ill people based on that characteristic if it is deemed necessary for their health on the job or the health of colleagues or customers. **However**, this is now allowed if adjustments to the workplace would mitigate this risk to health and safety. Meaning that the requirement for employers to provide a safe and disabled-friendly workplace is codified in the law. As such, if you are disabled or chronically ill and feel that you have not been chosen for a job position because of

that fact, there is a particular motive to ask for reasons as to why, preferably in a written statement (via email, for example).

Besides this national preference policy, companies are not allowed to give preference to particular groups of applicants over others under circumstances of equal qualification. That also entails that recruiters and employers may not discriminate in the selection process based on protected characteristics (described and listed in chapter 1 of this toolkit), such as gender identity, race, disability, et cetera.

Prohibited interview questions

A recruiter/employer is not allowed to just ask anything they want during a job interview. Besides harassing questions which are generally prohibited, there are some job-interview-specific questions that are prohibited.

Most importantly, the recruiter/employer may only ask questions during a job interview which are relevant to the function to which you are applying. A recruiter/employer may not ask about private matters, such as transition history, history of medical interventions, a possible desire for children or a desire to move, et cetera. If you do get a question of this nature, you are in no shape or form required to answer.

Furthermore, a recruiter/employer may not ask about your health, existing conditions, medical history, or frequency of absence at previous employment. Questions about your health may only be asked during a medical exam and only by qualified individuals. Such medical exams are only permitted for a very select number of jobs. If you are to undergo such an exam for a job position, it should always be mentioned in the job offer.

Only if an existing health condition specifically hinders you in the job position's tasks are you required to mention it to the recruiter/employer. For example, if you are applying to a construction site job, yet can only carry 5kg due to a particular back condition. That does not mean that you are obligated to disclose your condition, only the symptoms that might hinder you in your functioning for the job position. The recruiter/employer can still ascertain if you are physically capable for a job position without asking specifically about your health, for example by explaining the job position's tasks in detail and then asking you whether you are capable of performing those tasks.

B. Recognising discrimination in recruitment

In practice, it might be difficult to ascertain if you have not been chosen for a job because you possess certain protected characteristics for multiple reasons: a) many rejection letters are automated and do not give specific reasons at all, b) employers might not be

actively aware that they are discriminating if, for example, unconscious bias is one of the main driving forces of that discrimination, and c) if recruiters/employers *are* aware of their bias, they will likely want to hide it by giving fake or ulterior reasons for not hiring particular groups of applicants.

Previous research pointed towards dualistic reasoning for recruitment discrimination of gender-diverse people, which can potentially run parallel to each other within recruitment. Firstly, there is what can be called '*taste-based*' discrimination, which generally amounts to transphobia through emotive reactions such as disgust or having associations with it being abnormal or unnatural in some way. This form of discrimination in recruitment is generally more attributable to unconscious bias in the sense that the bias is more connected to 'gut reactions'. As such, people who discriminate on these false grounds might either be aware or unaware of their bias being a driving force in their decision-making.

Secondly, there is what can be called '*statistical discrimination*', which generally amounts to transphobia due to association with mental or physical illness. This form of discrimination in recruitment is generally more attributable to conscious bias in that it is generally a more conscious pattern of thought. For example, recruiters might consciously or unconsciously link transgender, non-binary and/or intersex people to mental or physical illness and come to the conclusion that such a worker will require relatively many sick days and time off work.

Though these forms of bias are different in their reasoning (though someone might fall victim to both at the same time), we might find ways to recognise both. Some signs of these forms of recruitment discrimination might be:

Recognising '*taste-based*' discrimination

- An interviewer seems uncomfortable during the interview, for example after being informed or becoming aware of the applicant being transgender, intersex and/or non-binary.
- An interviewer admitting to not really 'getting' or understanding transgender/intersex/non-binary people or their identities/intersex conditions.
- An interviewer asking inappropriate questions regarding your identity/intersex condition out of discomfort.
- An interviewer stating things like 'I have nothing against trans/intersex/non-binary people, but—', 'you turned out well', or 'I would never have known you were trans/intersex/non-binary if you hadn't told me'.
- An interviewer stating that it might be difficult to fit a trans/intersex/non-binary person in the organization culture.

Recognising 'statistical' discrimination

- An interviewer asking in detail about your history with transition and health.
- An interviewer asking if you plan to have any future surgeries or other medical interventions.
- An interviewer seems to have antiquated and wrong views about transgender people/intersex people needing to have a particular set of medical interventions to be 'complete'.

Practice: Disclosing your identity

Scenario: Sam is non-binary and intersex. They are interviewing for multiple jobs and want to disclose these parts of their identity during a particular job interview. How should they manoeuvre this conversation?

Discussion questions:

- When in particular should you disclose this part of yourself during the interview?
- What will you gain, and what might you lose by disclosing?
- What is your main aim with sharing this information?

Facilitator: Dos and Don'ts

Do's

- Indicate this part of your identity in a matter-of-fact way.
- Role-play a few ways to do so without distracting from your qualifications and interest in the position.
- Consider why you want to disclose. Make a list if that helps you.
- If it's a need related to work then absolutely move forward with disclosure.
- You can also disclose after you've been offered the position.

Don'ts

- Make your revelation as the focal point of your interview, which will not serve as an elevating factor for your interview and may distract your interviewer.
- Do not assume that you have to disclose this aspect of your identity. Sharing this information should be a choice, not an obligation.

Practice: You were not selected for a job

Scenario: Cleo recently interviewed for a new position at a marketing company. When she learned that she was not selected, she suspects that she was not hired due to her being transgender. She began suspecting this when, during the job-interview, the tone of the interviewer changed for the worse after she disclosed her identity.

Discussion questions:

- What should you do going forward?
- What options do you think you have?
- What do you know about your legal employment protections?

Facilitator: Dos and Don'ts

Do's

- Investigate what protections exist regarding employment anti-discrimination laws.
- Contact an anti-discrimination agency with your concerns, they might help you make a case.
- It might be safe to apply specifically to organisations that you know are trans-friendly in the future.
 - You may be able to ascertain if an organisation is trans-friendly if it is explicit about it on their website, specifically invited LGBTI+ people to apply to job positions, if other trans people have posted online about having good experiences with the organisation, or if they are part of LGBTI+ inclusion initiatives or projects, for example.
- Potentially contact the interviewer and politely ask if they may provide the reasoning for your not being hired.
 - This can best be done via email or other written media. If the recruiter/employer does hint your gender identity or intersex status were involved in the decision-making, you then have that as evidence for a possible complaint or case.

Don'ts

- Call the interviewing organisation and berate them.

Practice: A gap in your employment history

Scenario: Jules has a gap in employment due to transitioning. How might he explain his transitional period to a prospective employer?

Discussion questions:

- What options do you have to explain your employment gap?
- What are the pros and cons of explaining that your gap was due to a transition?

Facilitator: Dos and Don'ts

Do's

- Make certain that you have a good and plausible explanation.
- Consider such options as travel, end of contract, took some time to reconsider work-life balance, reorganisation at my former job with a good financial deal that gave me some time to spend with family, etc. to explain the employment gap.
- Consider being honest about the reasoning behind your employment gap without disclosing intimate details. For example, state briefly and in a business-like manner on your resume that you were unable to work due to personal reasons.
- If you'd like to create a resume that makes the gap due to illness less noticeable, you can also create a skills resume. The gaps are then not immediately visible as with a reversed chronological resume. A skills resume is classified according to the skills and qualities you have; this resume is not sorted by date.
- Consider telling a positive story about your gap in employment. Be prepared to declare this period in your favour as much as possible.

Don'ts

- Do not lie about a job if they can easily check it.

APPENDIX

Training Module Examples.

In the previous chapters, we have provided possible training exercises and topics. Offering all these exercises at the same time would be too long, however. In this chapter, we have therefore provided two examples of training modules that can be used. Each of these modules is estimated to take about three hours. The modules are meant as examples, you can also construct your own modules based on the needs of your participants. Especially in the training focused on transgender, intersex and non-binary people, it is important to focus the module on what challenges they face and what questions they have.

Module 1: General Knowledge

1. Introduction round, why strive for inclusion + short overview of terms. Current state of labour market for transgender, intersex and non-binary people.
2. Ice-breaker exercises.
3. **Practice scenario 1: Announcing a transition**, as discussed in *chapter 1. Knowing your rights*. Introduce the case, let participants discuss it in smaller groups, then discuss it collectively. End the discussion by giving some practical Dos and Don'ts. Add plenty of time for questions and interaction.
4. Short break.
5. **Practice scenario 2: A bathroom complaint**, as discussed in *chapter 2. How to: respond to discrimination at your job*. Introduce the case, let participants discuss it in smaller groups, then discuss it collectively. End the discussion by giving some practical Dos and Don'ts. Add plenty of time for questions and interaction.
6. **Practice scenario 3: Disclosing your identity**, as discussed in *chapter 3. How to: respond to discrimination in recruitment*. Introduce the case, let participants discuss it in smaller groups, then discuss it collectively. End the discussion by giving some practical Dos and Don'ts. Add plenty of time for questions and interaction.
7. Concluding the session. Discuss the participant's impression of the session, ask if there are more questions, ask what people have learned in the training, and shortly evaluate. Close the session by providing contact information of the local/national organisation that participants can ask for advice too.

Module 2: Discrimination-Related Knowledge

1. Introduction round, why strive for inclusion + short overview of terms. Current state of labour market for transgender, intersex and non-binary people.
2. Ice-breaker exercises.
3. **Practice Scenario 1: Pressured to leave the company**, as discussed in *chapter 1. Knowing your rights*. Introduce the case, let participants discuss it in smaller groups, then discuss it collectively. End the discussion by giving some practical Dos and Don'ts. Add plenty of time for questions and interaction.
4. Short break.
5. **Practice Scenario 2: Consistent misgendering**, as discussed in *chapter 2. How to: respond to discrimination at your job*. Introduce the case, let participants discuss it in smaller groups, then discuss it collectively. End the discussion by giving some practical Dos and Don'ts. Add plenty of time for questions and interaction.
6. **Practice Scenario 3: You were not selected for a job**, as discussed in *chapter 3. How to: respond to discrimination in recruitment*. Introduce the case, let participants discuss it in smaller groups, then discuss it collectively. End the discussion by giving some practical Dos and Don'ts. Add plenty of time for questions and interaction.
7. Concluding the session. Discuss the participant's impression of the session, ask if there are more questions, ask what people have learned in the training, and shortly evaluate. Close the session by providing contact information of the local/national organisation that participants can ask for advice too.

Evaluation criteria examples.

- What do you take away from this training?
- Did you feel safe telling about your experiences during this training?
- Would you have done something differently in the past, now knowing these things?
- Was this training roughly what you expected it would be?
- Did you miss anything?

Literature.

Beek, L., Cancedda, A., & Scheele, C. (2016). The business case for diversity in the workplace: Sexual orientation and gender identity. Retrieved from https://ec.europa.eu/info/sites/info/files/report_companies_final_en.pdf

Carpenter, M., Hough, D. (2014). Employers' guide to intersex inclusion. Retrieved from <https://ihra.org.au/wp-content/uploads/key/Employer-Guide-Intersex-Inclusion.pdf>

CBRE. (n.d.). Gender transition, expression, and identity tool kit. Retrieved from <https://www.cbre.es/-/media/cbre/countryunitedkingdom/images/corporate-responsibility/cbre-gender-identity-expression-and-transition-toolkit.pdf>

City, University of London. (2017). Transgender, intersex and gender non-conforming people: Policy. Retrieved from https://studenthub.city.ac.uk/_data/assets/pdf_file/0007/380833/Transgender-Intersex-and-Gender-Non-Conforming-People-Policy-Dec-2017.pdf

Collins, J. C., McFadden, C., Rocco, T. S., & Mathis, M. K. (2015). The problem of transgender marginalization and exclusion: Critical actions for human resource development. *Human Resource Development Review*, 14(2), 205-226.

Dray, K. K., Smith, V. R. E., Kosteck, T. P., Sabat, I. E., & Thomson, C. R. (2020). Moving beyond the gender binary: Examining workplace perceptions of nonbinary and transgender employees. *Gender Work Organ*, 27, 1181-1191.

Elvira, A., García, N., Solà, M., Coll-Planas, G., Missé, M., Schuler, A., Koenig, G. N., Breen, D., Grehan, G., Martin, A., Turraoin, C., Kardos, N., & Sándor, B. (2020). TransVisible: A professional guide to labour inclusion and economic empowerment of trans women. Retrieved from https://transvisible.org/wp-content/uploads/2021/02/TransVisible-Guide_EN.pdf

Employable. (n.d.). Intersex inclusion in your workplace. Retrieved from https://d3n8a8pro7vhmx.cloudfront.net/lgbtihealth/pages/565/attachments/original/1604543515/2.3_Intersex_Inclusion_in_your_Workplace.pdf?1604543515

Ernst & Young. (2006). Workplace gender transition guidelines. Retrieved from <https://assets2.hrc.org/files/assets/resources/ErnstYoung-TransitionGuidelines.pdf>

Fidas, D., & Bailey, B. (2016). Transgender inclusion in the workplace: A toolkit for employers. Retrieved from https://assets2.hrc.org/files/assets/resources/Transgender_Inclusion_in_the_Workplace_A_Toolkit_for_Employers_Version_10_14_2016.pdf

Government Equalities Office. (2015). The recruitment and retention of transgender staff: Guidance for employers. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/484855/The_recruitment_and_retention_of_transgender_staff_guidance_for_employers.pdf

Hixson-Vulpe, J. (n.d.). Hiring across all spectrums: A report on broadening opportunities for LGBTQ2+ jobseekers. Retrieved from https://prideatwork.ca/wp-content/uploads/2018/01/PrideAtWork_2018_Round_FINAL-s.pdf

Human Rights Campaign Foundation. (n.d.) Responding to Negative Reactions to LGBTQ Inclusion. Retrieved from <https://www.thehrcfoundation.org/professional-resources/responding-to-negative-reactions-to-lgbtq-inclusion>

Intersex Human Rights Australia. (n.d.). Workplaces. Retrieved from <https://ihra.org.au/workplaces/>

- Lee Badgett, M. V., Durso, L. E., Kastanis, A., & Mallory, C. (2013). The business impact of LGBT-supportive workplace policies. Retrieved from https://escholarship.org/content/qt3vt6t9zx/qt3vt6t9zx_noSplash_597c0e0c9e15189fb86a4c3166baa1bd.pdf?t=mpsapk
- Make the Road New York. (2010). Transgender need not apply: A report on gender identity job discrimination. Retrieved from http://www.maketheroadny.org/pix_reports/TransNeedNotApplyReport_05.10.pdf
- Marvell, R., Broughton, A., Breese, E., Tyler, E. (2017). Supporting trans employees in the workplace. Retrieved from <https://www.acas.org.uk/supporting-trans-employees-in-the-workplace/html>
- NHS Lothian & LGBT Health and Wellbeing. (2016). Transgender workplace support guide. Retrieved from <http://www.lgbthealth.org.uk/wp-content/uploads/2016/07/TWSP-Info-Guide-Final.pdf>
- Out & Equal Workplace Advocates. (2018). Best practices for non-binary inclusion in the workplace. Retrieved from <https://outandequal.org/wp-content/uploads/2018/11/OE-Non-Binary-Best-Practices.pdf>
- Pride in Diversity. (2010). Sexual orientation and gender diversity in the workplace. Retrieved from https://www.griffith.edu.au/___data/assets/pdf_file/0023/196034/PID-Sexual-Orientation-Gender-Diversity-Handbook.pdf
- Project Include. (n.d.). Case study: Transgender people. Retrieved from https://projectinclude.org/transgender_people
- Rodríguez-Roldán, V. M., & Imse, E. (2016). Valuing transgender applicants and employees: A best practices guide for employers. Retrieved from <https://ohr.dc.gov/page/transemployees>
- Sears, B., & Mallory, C. (2015). How LGBT-related workplace policies can have a positive impact on the corporate bottom line. In Gender identity and sexual orientation discrimination in the workplace: A practical guide. UCLA: The Williams Institute. Retrieved from <http://escholarship.org/uc/item/2fh9x0zv>.
- Seksediversiteit.nl. (n.d.). Beginnerscursus seksediversiteit, Wat is Intersekse?. Retrieved from <https://www.seksediversiteit.nl/basis/definitie/>.
- Stonewall Scotland. (2015). 10 steps to LGBT-inclusive communications. Retrieved from <https://www.stonewall.org.uk/resources/10-steps-lgbt-inclusive-communications>
- Stonewall. (2018). Starting out 2018/19: The LGBT careers guide. Retrieved from <https://www.stonewall.org.uk/resources/starting-out-201819>
- Task Force for Transgender Inclusion. (2019). An institution's guide to: Gender transition and transgender inclusion in the museum field. Retrieved from <https://www.aam-us.org/wp-content/uploads/2017/11/An-institutions-guide-to-gender-transition.pdf>
- Zieselman, K., Ittelson, A., Fidas, D., Gelpi, M., & Perrou, M. (2020). Supporting intersex inclusion in the workplace. Retrieved from https://outandequal.org/wp-content/uploads/2020/10/IntersexResource_R62.pdf