

INCLUSIVE DATA INTEGRITY Maintaining Consistent OSH Data With Transgender & Nonbinary Individuals

By Morgan Bliss, Megan Merbach and Bill Geddings

In June 2021, the Biden-Harris Administration announced federal actions to “advance equality, inclusion and opportunity for transgender Americans” that include a simplified process to update gender markers on identification documents and to model employer best practices for transgender, gender nonconforming and nonbinary employees (The White House, 2021, para. 2).

As of October 2021, the first U.S. passport with an X gender marker was issued (U.S. Department of State, 2021a). This article briefly explores how upcoming federal actions may impact the recordkeeping practices of OSH professionals and provides guidance for inclusive data integrity with transgender and nonbinary employees.

OSH professionals are often tasked with completing recordkeeping activities for workplace incidents and injuries. Consider the following scenario: An employee experiences a back strain injury. Recently, the employee changed their name and now uses the pronouns they/them/theirs. The company does not currently have a third gender marker option. On previous injury and near-miss reports for this employee, all the data are listed under the employee’s previous name and gender. In this scenario, it is important to ensure that injury data are accurate and consistent while also ensuring that the individual’s new name, gender marker and pronouns are respected.

What can an OSH professional do in this scenario? Perhaps the U.S.-based OSH professional visits the OSHA injury and illness recordkeeping and reporting requirements website and uses the keyword search. The person might enter multiple search terms in the search bar such as “transgender,” “gender” and “sex,” and the search yields no applicable results. Then, the safety professional might refer to the OSHA letters of interpretation about recordkeeping or the OSHA Recordkeeping Advisor, but after a quick search and skim, they realize that these sources also do not provide guidance for this particular question. Name and gender marker changes could be covered by OSHA’s requirement for log updates to be “made on a continuing basis, i.e., as new information is discovered” (OSHA, 2001, para. 6). There is a small amount of guidance in 29 CFR 1904.29(b)(9) about protecting the identity of workers (name, gender,

department or other information) for privacy-sensitive injuries or illnesses, which allows the employer to “mask or withhold this information both on the log and incident report” (OSHA, 2005, p. 103). However, this is not a privacy-sensitive injury, so the OSH professional may be unsure how to proceed.

Expanding out the search to include general information on data governance, the OSH professional may find that sources recommend updating database information to reflect an individual’s new name and gender marker (Koti, 2019). Additionally, some sources show the usefulness of personal data tied to a number, such as an employee or patient number (Grasso, 2016). If employees have a unique employee number, this may be a viable option to enter the injury under the employee number and the individual’s new name and gender marker. The previous name and gender marker information could be stored in a “previously known as” data field so users do not have to change previous data while also allowing the data viewer to know which entries are for the same person.

OSHA (2015a) stated in a trade release that the agency planned to work with the National Center for Transgender Equality (NCTE) to develop guidance for employers with transgender workers. The only guidance document found was a best practices document about providing adequate restroom access for transgender workers (OSHA, 2015b). A limited literature review did not reveal applicable recordkeeping guidance from the European Agency for Safety and Health at Work or similar international OSH groups.

The White House (2021) plans to include the U.S. Department of Labor in the new Interagency Working Group on Safety, Inclusion and Opportunity for Transgender Americans. Therefore, guidance may be forthcoming on this recordkeeping concern. Given the announcement that the White House (2021) will be adding a third gender marker for gender

nonconforming, nonbinary and intersex individuals, employers can demonstrate their commitment to diversity, equity and inclusion efforts by adding a third gender marker option (which could be X in addition to the M and F options). The U.S. Department of State (2021b, para. 2) is “working to add a gender marker for nonbinary, intersex and gender nonconforming persons as soon as possible” and notes that the passport form update should be completed in early 2022.

The Human Rights Campaign (HRC) Foundation (2015) recommends that employers “recognize a transgender employee’s preferred name and gender to the greatest extent possible . . . and develop systems for addressing situations in which an employee’s preferred name and gender expression does not match legal documents” (p. 2). The personnel and administrative records should be updated as well (HRC Foundation, 2015). In an employer tool kit about transgender inclusion in the workplace, the HRC Foundation (2016) developed the following nonexhaustive guidelines for proactive and inclusive recordkeeping practices within an organization:

- Expand options for self-identification of gender identity on employee demographics by including gender expansive identities such as genderqueer, gender fluid, nonbinary and others.

- Develop a procedure for implementing workplace changes related to an individual’s transition, including updating personnel and administrative records.

- Develop or update a policy to ensure confidentiality of sensitive employee data for use, storage and reporting.

Additionally, an article from the Society for Human Resource Management notes the importance of prohibiting discrimination against nonbinary individuals, while also describing some of the federal recordkeeping complications associated with modifying human resources forms to include a nonbinary option (Smith, 2018). Perhaps those federal recordkeeping complications that



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enforce the binary gender options, such as the EEO-1 form, will be addressed in the White House's Interagency Working Group on Safety, Inclusion and Opportunity for Transgender Americans. But, in the meantime, employers can develop workplace transition plans to accommodate transitioning transgender and non-binary employees (Reyes, 2019).

Overall, there is no concrete guidance on data integrity relating to name and gender changes, especially with regard to updating historical injury records. However, it is important that OSH professionals set the bar for inclusivity to build positive relationships with the people they serve. It is also important, from a data integrity standpoint, to accurately represent the individuals within organizational records. These data can potentially show trends with regard to the transgender and nonbinary communities, much like injury trends that disproportionately affect female and male employees.

OSH professionals are encouraged to bring this recordkeeping concern to the attention of human resources, information technology and leadership in their organizations. Recommend that a working group within the organization assess and update company policies and procedures relating to transgender and nonbinary employees. It is hoped that OSHA and NCTE plan to provide additional guidance for OSH professionals about equitably and inclusively handling these recordkeeping changes and updates. **PSJ**

References

Grasso, C. (2016, Nov. 16). SOGI data integrity and quality. www.lgbtqihealtheducation.org/wp-content/uploads/2016/11/SOGIDataQualityWebinarFinal.pdf

Human Rights Campaign (HRC) Foundation. (2015). Navigating gender inclusion in gendered spaces: Best practices for employers. https://assets2.hrc.org/files/images/general/Module_3_Navigating_Gender_Inclusion.pdf

HRC Foundation. (2016). Transgender inclusion in the workplace: A toolkit for employers. https://assets2.hrc.org/files/assets/resources/Transgender_Inclusion_in_the

[_Workplace_A_Toolkit_for_Employers_Version_10_14_2016.pdf](#)

Koti, I. (2019). TRANSitory records: Legal and ethical record keeping considerations for transgender individuals. *Information Governance World*, 2(1), 69-71. www.accesscorp.com/blog/transitory-record-keeping-for-transgender-individuals

OSHA. (n.d.). OSHA injury and illness recordkeeping and reporting requirements—Q&A search. www.osha.gov/recordkeeping/faq-search

OSHA. (2001, Jan. 19). Preamble discussion: Section 1904.33 (66 FR 6048-6050). www.osha.gov/recordkeeping/entry-faq

OSHA. (2005). OSHA recordkeeping handbook: The regulation and related interpretations for recording and reporting occupational injuries and illnesses (Publication No. OSHA 3245-09R).

OSHA. (2015a, May 4). OSHA and the National Center for Transgender Equality form alliance to protect safety, health of transgender workers [Press release]. www.osha.gov/news/newsreleases/trade/05042015

OSHA. (2015b). Best practices: A guide to restroom access for transgender workers. www.osha.gov/sites/default/files/publications/OSHA3795.pdf

OSHA. (2017). Recording and reporting occupational injuries and illness (29 CFR 1904.29). www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.29

Reyes, R.M. (2019, March 18). Transgender individuals in the workplace: An overview of employers' scope of obligations in California. *The National Law Review*, 9(77). www.natlawreview.com/article/transgender-individuals-workplace-overview-employers-scope-obligations-california

Smith, A. (2018, Feb. 16). How to accommodate "gender-nonbinary" individuals—Neither men nor women. SHRM. www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/gender-nonbinary-individuals.aspx

U.S. Department of Labor. (n.d.). OSHA Recordkeeping Advisor. <https://webapps.dol.gov/elaws/OSHARecordkeeping.htm>

U.S. Department of State. (2021a, Oct. 27). Issuance of the first U.S. passport with an X gender marker [Press statement]. www.state.gov/issuance-of-the-first-u-s-passport-with-an-x-gender-marker

U.S. Department of State. (2021b). Selecting your gender marker. <https://travel.state.gov/content/travel/en/passports/need-passport/selecting-your-gender-marker.html>

The White House. (2021, June 30). Fact sheet: Biden-Harris Administration advances equality for transgender Americans [Press release]. www.whitehouse.gov/briefing-room/statements-releases/2021/06/30/fact-sheet-biden-harris-administration-advances-equality-for-transgender-americans

Morgan M. Bliss, Ed.D., CIH, CSP (they/them), is an assistant professor and graduate coordinator in the Safety and Health Management Program at Central Washington University. Bliss has more than 15 years of experience as an industrial hygiene, occupational safety, environmental management, and emergency management consultant and educator. They hold an Ed.D. in Health Professions from A.T. Still University and an M.S. in Technology—Environmental Management from Arizona State University. Bliss is a professional member of ASSP's Puget Sound Chapter and a member of the Society's Training and Communications, and Industrial Hygiene practice specialties, and Women in Safety Excellence Common Interest Group. They also serve as the Professional Development Chair of ASSP's Industrial Hygiene Practice Specialty.

Megan Merbach, CSP (she/her), is an environmental, safety and health engineer with Lockheed Martin and a graduate student in the Safety and Health Management Program at Central Washington University. She has more than 5 years of experience in the occupational safety, health and environmental fields within the manufacturing sector. Merbach is a member of ASSP's West Florida Chapter and Manufacturing Practice Specialty, which she also serves as Professional Development Chair.

Bill Geddings, SMS, CEM, OHST, CHST (he/him), is a senior safety engineer with Zoex, where, as a leader, he collaborates with scientists and engineers in research and development labs as well as with manufacturing and test teams to solve environmental, health and safety challenges. He has more than 21 years of experience in OSH, is passionate about diversity, equality, equity and inclusion, and serves as a member of ASSP's Professional Conduct Committee. Geddings is a member of ASSP's San Francisco Chapter; the Blacks in Safety Excellence, Emerging Professionals in OSH, Hispanic Safety Professionals and Women in Safety Excellence common interest groups; and the Manufacturing Practice Specialty.