



Massachusetts Transgender Political Coalition

PO Box 301897, Jamaica Plain, MA 02130

617-983-0219 info@masstpc.org

www.masstpc.org

“No Match” Letters and Transgender Workers

Transgender workers face adverse effects if employers receive “No Match” Letters from the Social Security Administration (SSA):

Background:

“Transgender” is an umbrella term encompassing: pre-operative, post-operative, and non-operative transsexual people; cross-dressers; feminine men and masculine women; and, more generally, anyone whose gender identity or expression differs from conventional expectations of masculinity or femininity.¹ Some transgender people experience their gender identity as incongruent with anatomical sex at birth.

The Transgender community includes, but not limited to:

Male-to-Female (MTF) is a person whose assigned gender at birth was male, but transitions to live and identify as female.

Female-to-male (FTM) is a person whose assigned gender at birth was female, but transitions to live and identify full time as male.

While no complete census of transsexual people in the United States currently exists, reasonable estimates range as high as 0.5% (one half of one percent) of the population.²

Transition:

Gender transition is a personal process which a transgender person goes through when they begin to live and identify as the gender they see themselves as. This process includes a social transition, which a person changing their gender expression, such as clothes and hairstyle; pronoun; and possibly their first name, to be reflective of the gender they are transitioning to. This process may also include support from therapist and a medical transition, which can be hormone replacement therapy and/or sex reassignment surgery.

For some transgender people, they may not access medical transition due to the prohibitive cost, access to providers, physical health issues, lack of health insurance coverage, and/or personal choice. Not all transgender people are able to access sex reassignment surgery due the fact that the majority of health insurance policies do not cover surgery costs, therefore it is cost prohibitive. The reality is that many transgender people live, present, and are accepted as the gender they see themselves as without sex reassignment surgery.

Making a Gender Marker Change with Social Security Administration:

A no match letter for a transgender person could be based on the gender an employer submits to SSA versus what is listed with SSA for the individual. The SSA rules for changing a gender marker are:

Gender Marker Change: “The surgeon or attending physician must provide a letter verifying the sex change surgery has been completed.”³

Why this problematic for transgender workers

If a transgender person is unable to comply with SSA’s rules for gender marker change, they are unable to change their gender marker with SSA, even if they have other documentation listing the gender they live as.

¹ Transgender Law and Policy Institute, (www.transgenderlaw.org)

² Lynn Conway, University of Michigan, Ann Arbor, MI, (<http://ai.eecs.umich.edu/people/conway/TS/TSprevalence.html>)

³ Social Security Administration Policy Site: POMS Section RM 00203.210



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Employees in general, do not disclose gender on federal forms such as the W-2 or I-9, therefore the gender of employee is sent by employers to Social Security Administration which is based on the assumption of gender by the employer.⁴

A “Gender No Match” letters may also be compromising compliance with federal medical privacy laws and constitutional guarantees of privacy. Because of the SSA’s own rules regarding proof of medical procedures to change a gender marker, an employer receiving a “Gender No Match” letter about an employee is the SSA disclosing a person surgical status to their employer, therefore disclosing personal medical information with a third party.

A transgender employee does not have to disclose to their employer that they are transgender, just as other employees have the right to privacy about their identity, their medical status, or other information that is not pertinent to their job performance.

A “Gender No Match” letter invades the privacy of transgender individuals by disclosing their personal medical information to their employers. With only 17 states and 99 jurisdictions having employment non-discrimination protections for transgender workers, transgender workers can be fired from their jobs for being transgender. Unfortunately, some transgender people have been fired, dealt with harassment from co-workers, or have been discriminated against, because of a “Gender No Match” letter was sent to their employer by the SSA.

No one should be fired from their job, because SSA disclosed their personal medical information, which is not pertinent to their job or job performance.

Solutions:

The Massachusetts Transgender Political Coalition suggestions that the Social Security Administration stop sending “Gender No Match” letters to employers.

Sending “Gender No Match” letters are waste of taxpayer’s money and maybe compromising compliance with federal medical privacy laws and constitutional guarantees of privacy.

The Massachusetts Transgender Political Coalition also supports the National Center for Transgender Equality proposed solution which suggests “that the governmental bodies that receive information from employers not accept or process information about the employee’s gender.”⁵

⁴ National Center for Transgender Equality (<http://www.nctequality.org/Issues/I-9-nomatch-comment.pdf>)

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