

# How do you interview transgender job applicants?

Do you have to treat transgendered job applicants differently? Which box, if any, do you check on the application—male or female? And what special laws must you know about?

Federal workplace anti-discrimination laws don't specifically extend protection to transgendered people (those who present themselves as members of the opposite sex). However, 13 states—California, Colorado, Hawaii, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington—plus several cities and counties have passed such laws.

A new court ruling shows that even if your state or city doesn't have such a law, your organization may still face liability for discriminating against transgendered people. That's why it's wise to handle interviews with transgendered people just as you would with anyone—focused on job-related information only.

**Case In Point:** Raul Lopez is a biological male who presents himself in public as Izza Lopez, a female. Lopez applied for a position as a telephone scheduler at a Houston medical clinic. He submitted his application using both his male and female names and was open about being transgender.

Two people interviewed him for the position. He thought they both knew he was transgender because he had friends at the clinic who shared that information. Lopez used both names for his background check and drug test. He was eventually offered the position.

But the HR director demanded to know what Lopez's biological sex was and later rescinded the offer, saying Lopez "misrepresented" himself as a female in the interview. The clinic has a written policy that refuses to hire people whose background checks reveal they misrepresented themselves to get hired.

Lopez sued for sex discrimination under Title VII of the Civil Rights Act of 1964. But he didn't sue because he was transgendered (remember, that's not protected under the law). Rather, he sued because he was allegedly discriminated against because he was perceived as not conforming to traditional gender stereotypes of how a male should look. (The Supreme Court has said Title VII cases can be based on an employer's perception that an individual fails to conform to traditional gender roles.)

The clinic argued that Lopez couldn't pursue the case because transgender people aren't a protected class under Title VII. ([\*Lopez v. River Oaks Imaging & Diagnostic Group, Inc.\*](#), 4/3/08)

## How did this case end ... and what three lessons can be learned?

The court this month refused to grant the employer's request for summary judgment. It sent the case to trial, noting that: "Title VII is violated when an employer discriminates against any employee, transsexual or not, because he or she has failed to act or appear sufficiently masculine or feminine enough for an employer."

The court added that Lopez has gender identity disorder, a condition that "involves a persistent discomfort with one's biological sex or a sense of inappropriateness in the gender role of one's sex." Lopez plans to undergo sex

reassignment surgery in the future.

### **3 Lessons Learned ... Without Having to Go To Court**

**1. Focus on the job description.** The clinic's HR director insisted that Lopez explain his biological sex. That information was irrelevant for the job he was seeking to perform. But the inquiry gave the court an inference that gender was being unlawfully considered in the employment process.

**2. Recognize the reach of the law.** Just because federal law doesn't cover transgendered people, don't think that it's open season on such classes of people. As this case shows, if you aren't in one of the [states, cities or counties](#) that protect gender identity and gender expression, you can still be hit with a Title VII lawsuit for sex discrimination.

**3. Follow the "Handshake Rule."** Train everyone how to interview if they are even minimally involved in hiring. Because even what they say when they shake the applicants hand is part of the interview and can be weighed as evidence at trial.