

Immigration challenges faced by transgender and gender non-conforming individuals in the UK

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It's fair to say that everyone wants - and should - have a positive experience in their working environment: somewhere that regardless of background or identity, they can thrive in their professional life. Many businesses and corporations alike strive to champion diversity, inclusion and equality. However, it's still the case that irrespective of the progressive ethos

of a business, wider legal and compliance requirements may inadvertently place potential employees in an uncomfortable and potentially traumatic position. In this blog, I explore how the UK Right to Work checks, risk increasing the challenges faced by transgender and non-binary individuals.

Right to Work checks in the UK

An area that's gaining increased attention in the UK, is around the onboarding process which includes a Right to Work check that employers must carry out in order to benefit from statutory protections against civil penalties for hiring someone without the correct right to work documentation (passport and personal identity documentation, in line with the set lists provided by UK Visas and Immigration). Without the Right to Work checks being conducted, in the prescribed format from the UKVI, employers face significant civil penalties and reputational damage to the company. As a result, Right to Work checks are central to a robust and compliant onboarding process. However, these checks can create challenges for some individuals whose personal identity documentation does not reflect who they are at the time of their onboarding. Specifically, individuals who have changed their gender - or in the process of doing so - will often not have obtained updated official personal identity documentation that reflects their gender and new name.

Gaps in the current RTW guidance

There is no guidance for employers on how to mitigate the needs of trans and gender non-conforming candidates in the RTW process. The [current guidance](#) that was updated in April 2022 states that acceptable documentation for the RTW process includes a passport or a birth or adoption certificate, as well as the immigration documentation that states the individual can work in the UK. Despite recent lobbying from those working in the migration space, there is yet to be inclusion of gender identity or certificates to prove gender transition or preference, in the right to work guidance. Further, employers must check the validity of documents by analysing the names and photographs on the given documents against the individual present, whether in a room or via video link. This then raises the question: *is it fair in these circumstances, that both the employer and employee should be at risk of a civil penalty if the individual is known by a preferred name and has a different appearance than that on their legal documents?*

Ideally, the RTW guidance should be updated to include circumstances where an employer makes a job offer to a trans or gender non-conforming person, and detail the documents which can be accepted as part of the process, similar to that in the EU Settlement Scheme (although we'd argue should go further and recognise a third gender, unlike the EUSS) that accepts a has transitioned. The guidance should also include how an employer updates the Home Office of their records where they have an employee who comes out as trans or gender non-conforming after commencing their employment. Indeed, the policies and guidance should include that, often, the RTW process may need to vary depending on circumstances of the individual; focusing on an employee-centric approach. The process should also be certain to obtain authorisation from the individual that any ID documentation held on file can be shared with UKVI if requested, for example, when an audit is run.

Scale of impact

Whilst there isn't any robust data on how many trans or gender non-conforming people there are in the UK, the [Government Equalities Office](#) estimates there are approximately 500,000 people who don't identify as the gender they were assigned at birth. In the UK, we have the Gender Recognition Act 2004 that enables a person to change the sex recorded on their birth certificate either from male to female or vice versa - though this makes no provision for the recognition of any other gender. The government offers legal protection from discrimination against people who are gender fluid, non-binary or transitioning based on having or being perceived have having a protected characteristic as defined in the Equality Act 2010. However, despite a consultation of the 2004 Act, a number of transgender rights groups have argued that:

‘the UK government has fallen far short on its promise to reform the Gender Recognition Act, and has missed a key opportunity to progress LGBT equality.’

According to Mental Health UK, 67% of trans people have experienced depression in the previous year. ‘While the reasons for mental health issues are complex, there are countless experiences that LGBTQIA+ people will often deal with as a minority community, such as stigma, prejudice, and discrimination.’ Another question comes to mind: what direct effect does the UK RTW process have on trans and gender non-conforming people applying for employment?

Vialto Partners - our purpose

At Vialto Partners, we celebrate our open and welcoming culture. We make it known to clients that they can make us aware of their preferred names and gender. Where this doesn't match their legal documentation, we work with individuals on navigating immigration requirements, whilst remaining sensitive to the personal circumstances of the applicant. We support the recent efforts of other immigration practices and groups in calling for reformation to the UKVI guidance on the RTW process.

Vialto Partners is your ally in mobility, tax and immigration solutions. But more than that, we are allies to all of your people and stand together. We recognise that the work we do in the immigration space has a societal impact. We aim to work with organisations to make immigration systems fairer and more inclusive to all.