

She
Her

PRONOUNS & GENDER IN THE LEGAL SYSTEM

He
Him

They
Them

HELLO

My pronouns are

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They
Them

He
Him

She
They

He
They

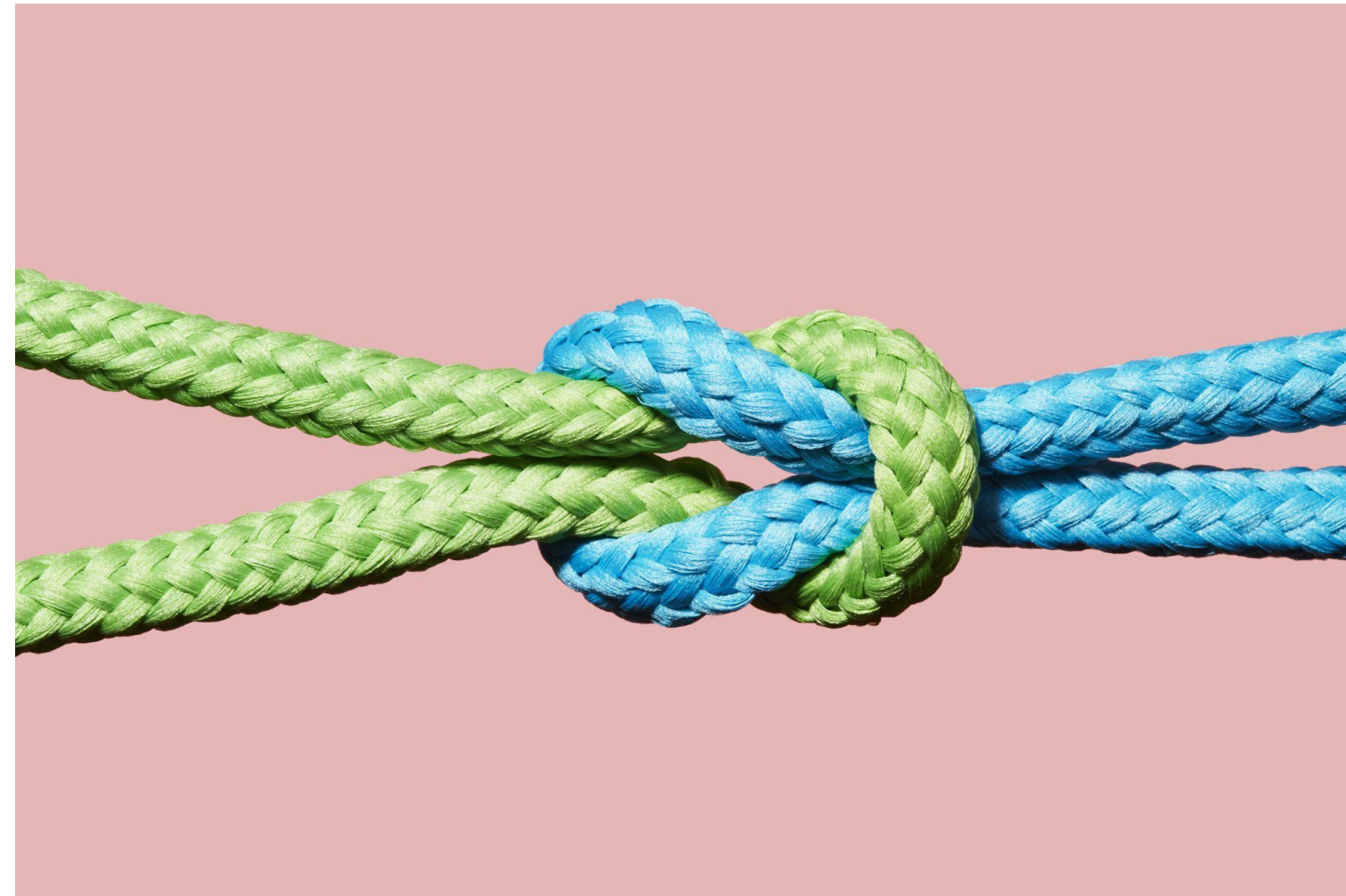
She
Her

LEARNING OBJECTIVES

Terminology

Statutory Considerations (including primarily the Colorado Anti-Discrimination Act)

Treating People Ethically in Your Practice



Community Agreement

Give yourself space and grace as we learn and grow.

Listen actively and not defensively.

Understand your experiences are not the same as others'.

What's said here stays here; what's learned here leaves here.

Be curious, not judgmental.

TERMINOLOGY: INTRODUCTION

Note: The terms and definitions we will be discussing are always evolving, changing and often mean different things to different people.

The terms and definitions we provide are a starting point for discussion and understanding.



**MY
PRONOUNS
ARE:**



TERMINOLOGY: LGBTQ

LGBTQ refers to Lesbian, Gay, Bisexual, Transgender, and Queer. You may also see LGBT, GLBT, or other variations such as LGBTQIA+.

L	Lesbian
G	Gay
B	Bisexual
T	Transgender
Q	Queer and/or Questioning
I	Intersex
A	Asexual
+	All of the other identities not encompassed in the acronym.

TERMINOLOGY: SEX & GENDER

Sexual Orientation is an individual's identity as it relates to the physical and/or emotional attraction to the same or to one or more different genders.

TERMINOLOGY: SEX & GENDER

Sex refers to a person's biological or physiological status based on chromosomes and reproductive organs, and is typically categorized as male, female, or intersex.

Intersex describes a person born with reproductive or sexual anatomy and/or a chromosome pattern that can't be classified as typically male or female. (Intersex is not the same thing as transgender.)

Gender refers to socially constructed roles, behaviors, and characteristics that a given society typically considers "appropriate" for women and men. These norms vary among different communities and societies and vary over time.

Gender is not limited to the binary "male and female" construct.

- Research demonstrates that the biological basis for gender differs from the biological basis for sex.
 - *See, e.g.* Woodhill, B., & Samuels, C., “Sex vs Gender: A biological basis for gender, not sex” (Apr. 4, 2022); Roselli CE., “Neurobiology of gender identity and sexual orientation” (July 30, 2018); ScienceDaily, “Transgender: Evidence on the biological nature of gender identity” (Feb. 13, 2015).

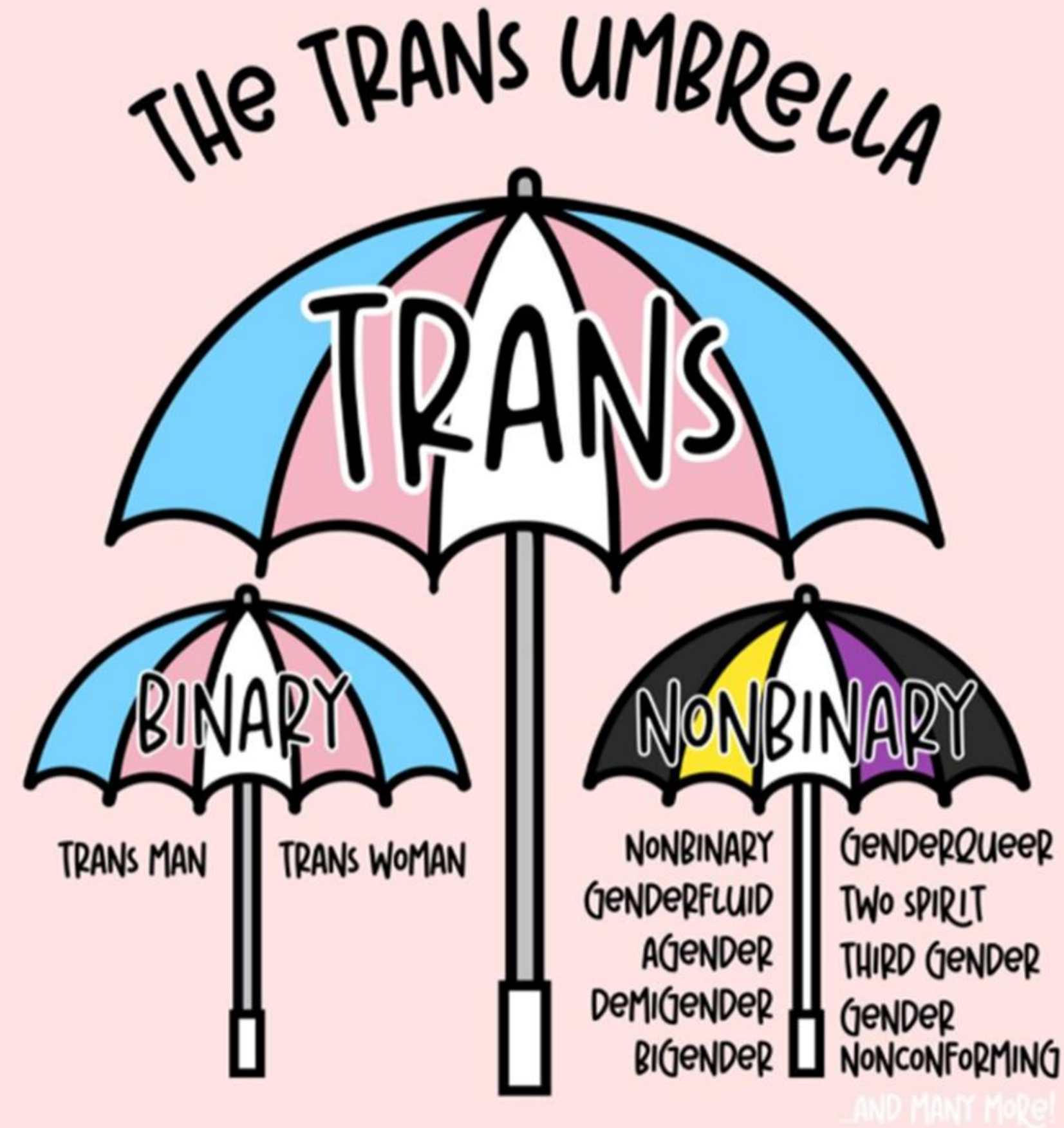
TERMINOLOGY: GENDER IDENTITY AND EXPRESSION

Gender Identity refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth. It can change over time.

Gender Expression refers to external manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics.

THE TRANS UMBRELLA

While “non-binary” is included under the broader “trans umbrella,” not all transgender individuals are non-binary. In fact, most transgender people identify as either male or female, rather than as non-binary.



UNACCEPTABLE TERMINOLOGY

- Transgendered
- Tranny
- Transsexual
- Transvestite
- Pre-operative/post-operative

TERMINOLOGY: TRANSITIONING

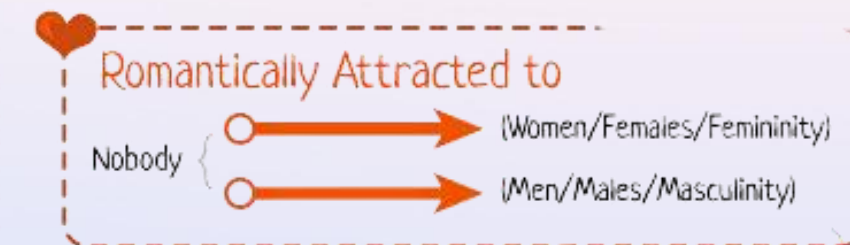
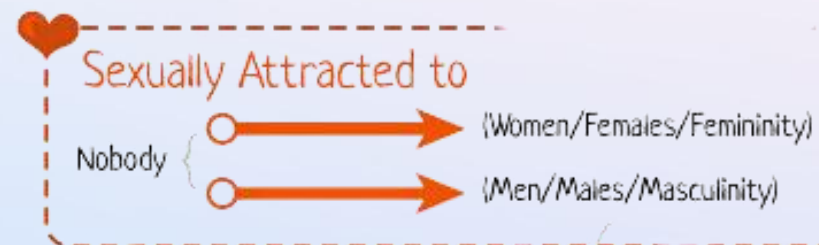
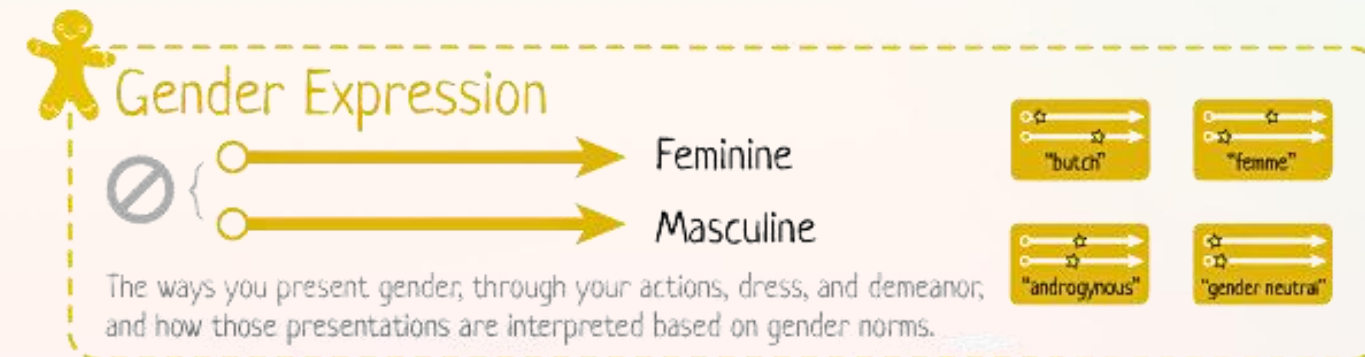
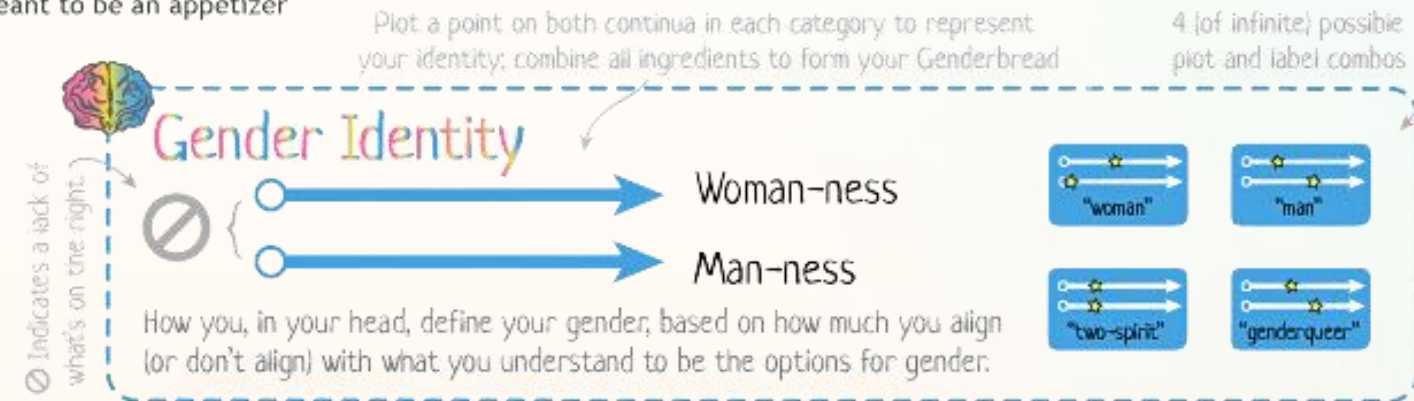
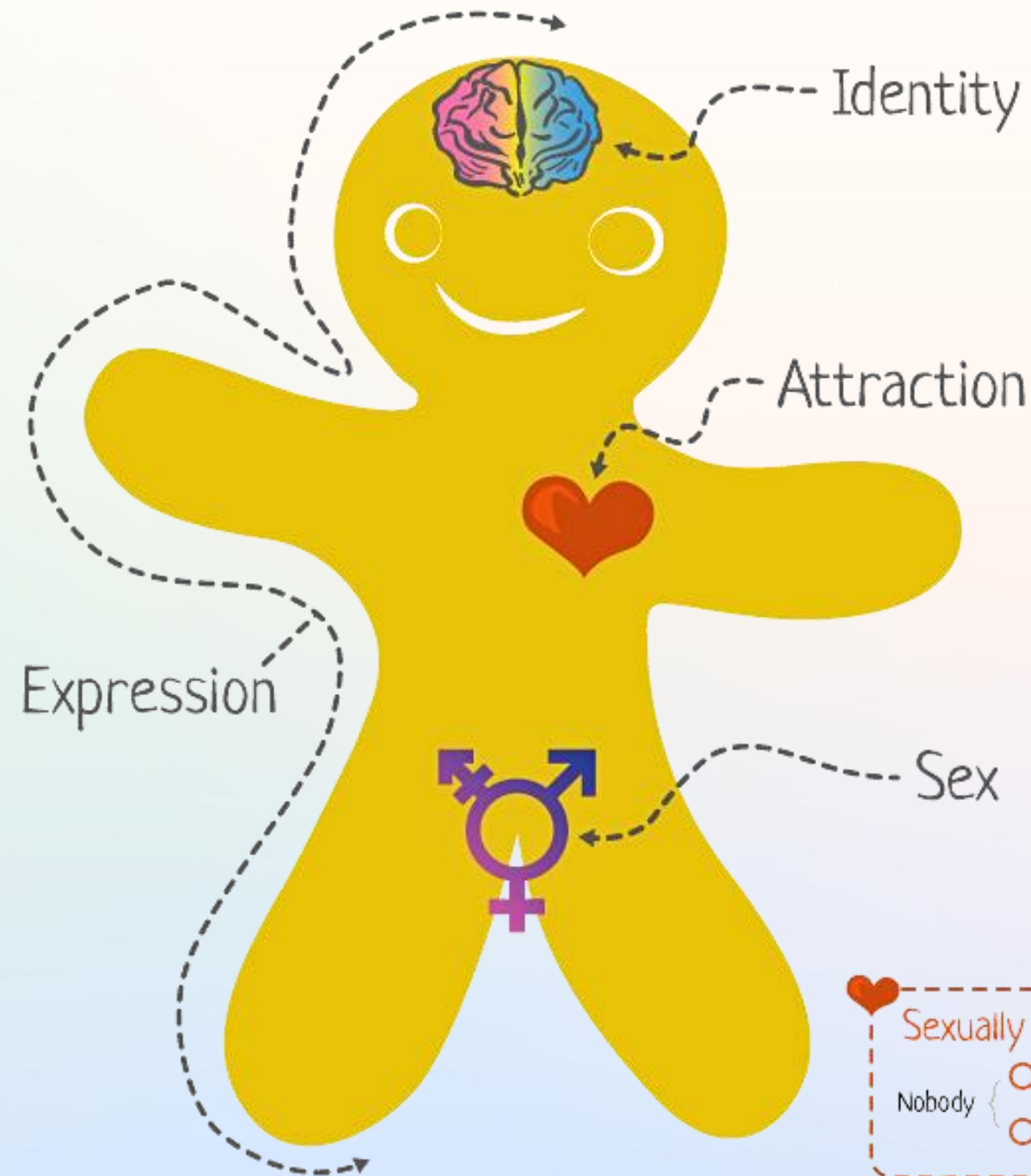


- Gender transition refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender instead of the sex they were assigned at birth. During gender transition, individuals may begin to outwardly express the gender consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity.
- Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly, over a long duration of time, or not at all.
- Medical treatment may or may not be part of transitioning.

THE GENDERBREAD PERSON

by it's pronounced **METROsexual**.com

Gender is one of those things everyone thinks they understand, but most people don't. Like *Inception*. Gender isn't binary. It's not either/or. In many cases it's both/and. A bit of this, a dash of that. This tasty little guide is meant to be an appetizer for gender understanding. It's okay if you're hungry for more. In fact, that's the idea.



For a bigger bite, read more at <http://bit.ly/genderbread>

In each grouping, circle all that apply to you and plot a point, depicting the aspects of gender toward which you experience attraction.

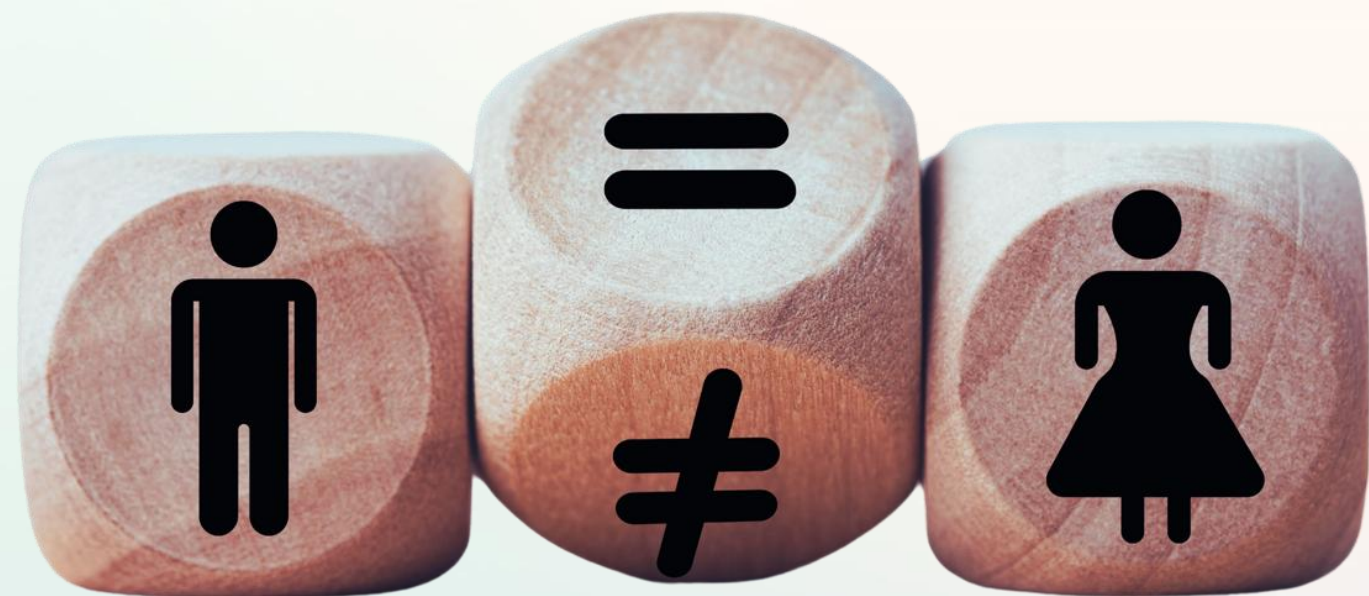
SEX STEREOTYPING

Regardless of gender identity, people can transcend “traditional” gender roles. For example:

- A girl who likes playing with cars
- An “effeminate” teenage boy who paints his nails
- A boyish-looking lesbian
- All of these individuals face bias based on preconceived notions of gender – what it means to look and act like a man or a woman.
- Female being called “sir” in public
- Gay teenager being reprimanded for “not acting like a man”
- Receiving curious/disapproving glances



COLORADO ANTI-DISCRIMINATION ACT



- Prohibits discrimination in employment, housing and public accommodations
- Amended in 2007 to add prohibition against sexual orientation discrimination.
- Amended in 2021 to explicitly add gender identity and gender expression.
- Makes it unlawful to “aid, abet, incited, compel or coerce” employment discrimination. C.R.S. § 24-34-402(1)(e)(I)

CADA'S PROTECTED CATEGORIES

SEX

**RACE/
CREED/
COLOR**

RELIGION

AGE

**NATIONAL
ORIGIN/
ANCESTRY**

DISABILITY

**MARITAL
STATUS**

**VICTIMS OF
DOMESTIC
VIOLENCE**

**SEXUAL
ORIENTATION**

**GENDER
IDENTITY &
EXPRESSION**

**EMPLOYEES ENGAGING
IN "LAWFUL OFF-DUTY
ACTIVITIES,"
C.R.S. 24-34-402.5**

RETALIATION

CADA DEFINITIONS

SEXUAL ORIENTATION

Sexual orientation is defined as “an individual’s identity, or another individual’s perception thereof, in relation to the gender or genders to which the individual is sexually or emotionally attracted and the behavior or social affiliation that may result from the attraction.” C.R.S. § 24-34-301(24).

GENDER IDENTITY

Gender identity is defined as “an individual’s innate sense of the individual’s own gender, which may or may not correspond with the individual’s sex assigned at birth.” C.R.S. § 24-34-301(10).

GENDER EXPRESSION

Gender expression is defined as “an individual’s way of reflecting and expressing the individual’s gender to the outside world, typically demonstrated through appearance, dress, and behavior.” C.R.S. § 24-34-301(9). Note: Neither the statute nor the regulations define “sex,” “gender,” or “transgender.”

HB25-1312 LEGAL PROTECTIONS FOR TRANSGENDER INDIVIDUALS (THE KELLY LOVING ACT)

24-34-301. Definitions. As used in parts 3 to 10 of this article 34, unless the context otherwise requires:

(3.5) "CHOSEN NAME" MEANS A NAME THAT AN INDIVIDUAL REQUESTS TO BE KNOWN AS IN CONNECTION TO THE INDIVIDUAL'S DISABILITY, RACE, CREED, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, MARITAL STATUS, FAMILIAL STATUS, NATIONAL ORIGIN, OR ANCESTRY, SO LONG AS THE NAME DOES NOT CONTAIN OFFENSIVE LANGUAGE AND THE INDIVIDUAL IS NOT REQUESTING THE NAME FOR FRIVOLOUS PURPOSES.

(9) "Gender expression" means an individual's way of reflecting and expressing the individual's gender to the outside world, typically demonstrated through appearance, dress, ~~and~~ behavior, CHOSEN NAME, AND HOW THE INDIVIDUAL CHOOSES TO BE ADDRESSED.

COLORADO CODE OF REGULATIONS: DRESS CODE

- Employers can “requir[e] compliance with a reasonable dress code as long as the dress code is applied consistently.” C.R.S. § 24-34-402(5).
- The dress code must “serve a reasonable business or institutional purpose” and “shall not require an individual to dress or groom in a manner inconsistent with the individual’s gender identity.”

3 CCR 708-1, Rule 81.8.

Business formal workplaces

Traditional business attire, including dresses, suits, and pantsuits, is required for external meetings with clients or prospects. Employees should use discretion on other occasions and are expected to demonstrate good judgment.



Casual workplaces

Adapted from The Balance: “Dress comfortably for work, but please do not wear anything that could offend your coworkers or make them feel uncomfortable. That includes clothing with profanity, hate speech, or exclusionary language. Your clothing, while casual, should show common sense and professionalism.”

According to Indeed, 50% of companies allow employees to dress casually every day, as of 2019.



PowerFly GUIDE GENDER NEUTRAL DRESS CODE

FIRST...

Spell out specific dress code rules by article of clothing, not by gender, use non-gendered pronouns, and make sure that any grooming guidelines could apply to anyone.

Don't place burdens on anyone based on their gender, and try to empower employees to manage their own appearance in accordance with professional expectations.



Business casual workplaces

Adapted from Forbes: “Employees should dress in business casual attire, which could include casual slacks and skirts, collared shirts, blouses, or sweaters. Inappropriate attire includes sportswear, jeans, and unkempt clothing, among other options. Please exercise good judgment.”



PROTECTING OPPORTUNITIES AND WORKERS' RIGHTS (POWR) ACT

For purposes of addressing discriminatory or unfair employment practices pursuant to Colorado's anti-discrimination laws, the act enacts the "Protecting Opportunities and Workers' Rights (POWR) Act", which:

- Directs the Colorado civil rights division (division) to include "harassment" as a basis or description of discrimination on any charge form or charge intake mechanism;
- Repeals the current definition of "harass" that requires creation of a hostile work environment and redefines "harass" or "harassment" as unwelcome conduct directed at an individual or group of individuals in, or perceived to be in, a protected class, which conduct is subjectively offensive to the individual alleging harassment and objectively offensive to members of the same protected class as the individual alleging harassment, and which conduct need not be severe or pervasive to constitute a discriminatory or an unfair employment practice;

OTHER STATUTORY PROTECTIONS



- No person can be denied a license to practice law on account of their gender identity or gender expression. C.R.S. § 13-93-102.
- No person shall be exempted or excluded from jury service because of their gender identity or gender expression. C.R.S. § 13-71-104.
- Juveniles may not be excluded from a diversion program based on gender identity or gender expression. C.R.S. § 19-2-303.

MUNICIPAL ORDINANCES

Denver's Anti-Discrimination Ordinance ("DADO")

- Prohibits discrimination on the basis of gender, sexual orientation, gender expression and gender identity
 - Includes other classes protected under federal and state law: race, color, religion, national origin, disability
 - Also categories not clearly included in federal or state law: citizenship, immigration status, marital status, military status, protective hairstyle
 - prohibits retaliation for opposing discrimination on these bases
- Damages for employment discrimination are not capped.
(Sec. 28-110.5)



LEGAL AND ETHICAL DUTIES IN YOUR PRACTICE



THE LAWYER'S OATH



- I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect, and honesty.
- I will use my knowledge of the law for the betterment of society and the improvement of the legal system.
- I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed.
- I will at all times faithfully and diligently adhere to the Colorado Rules of Professional Conduct.

RULES OF PROFESSIONAL CONDUCT

Professional misconduct includes

- “engag[ing] in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person’s . . . gender identity or expression [or] sexual orientation . . . whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process” Rule 8.4(g)
- “engag[ing] in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer’s fitness to practice law” Rule 8.4(h)
- “engag[ing] in conduct the lawyer knows or reasonably should know constitutes sexual harassment where the conduct occurs in connection with the lawyer’s professional activities. Rule 8.4(i)

RULES OF PROFESSIONAL CONDUCT

- Rule 8.4, Comment [5A]
 - Sexual harassment may include, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that a reasonable person would perceive as unwelcome.
 - The substantive law of employment discrimination, including anti-harassment statutes, regulations, and case law, may guide, but does not limit, application of paragraph (i).
 - “Professional activities” are not limited to those that occur in a client-lawyer relationship.

Where Does This Come Up?

- In the Courtroom:
 - Jury selection
 - Direct and Cross-Examination
 - Opening Statement
 - Closing Argument



Where Does This Come Up?

- In your office:
 - Interactions with co-workers
 - Interactions with employees
 - Interactions with clients
 - Interactions with opposing counsel and co-counsel

Where Does
This Come
Up?

Pretty much whenever you are
talking *to or about* someone.

Gender exclusive v. inclusive language

	
Ladies and gentlemen, guys and gals	Colleagues, team, people
Maternity and paternity leave	Parental leave, parental time off
Husband, wife, boyfriend, girlfriend	Partner, spouse
"What are your preferred pronouns?"	"What pronouns do you use?"
Ms., Mr., or Mrs.	People's first names, non-gender specific titles like Mx or M
Mailman, chairman, policeman	Mail clerk, chairperson, police officer
Sexual preference	Sexual orientation

AIHR | ACADEMY TO INNOVATE HR

PRONOUNS & GRAMMAR

Use of “his or her” is underinclusive – just as much as the default to “he” was in days gone by. “They” has been a singular pronoun since at least the late 1300s.

“’Tis meet that some more audience than a mother, since nature makes *them* partial, should o’erhear the speech.”

-William Shakespeare, Hamlet



“I always delight in . . . cheating a person of *their* premeditated contempt.”

-Jane Austen, Pride & Prejudice

“No man goes to battle to be killed. . . .
But *they* do get killed.”

-George Bernard Shaw



“The person, whoever it was, had come in so suddenly and with so little noise, that Mr. Pickwick had had no time to call out, or oppose *their* entrance.”

-Charles Dickens,
The Pickwick Papers

But “they is . . .”? Nope!

- Remember – “you” can be either singular or plural depending on context
- And “are” can be a singular or plural verb, such as “you are open-minded.”

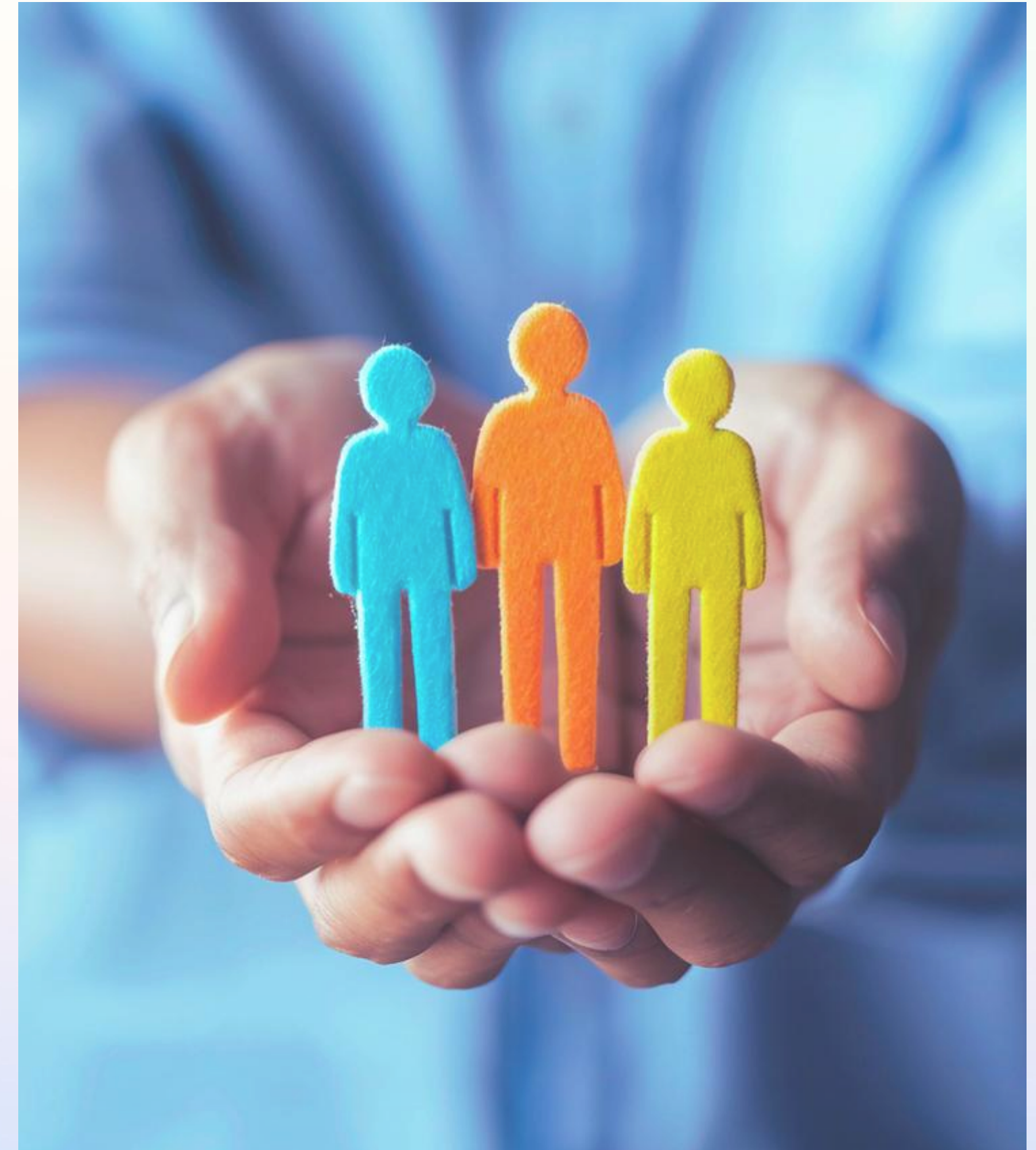


PRACTICING ALLYSHIP

- Add your pronouns in your email signature and online.
- Avoid addressing the group as “ladies and gentlemen”
- Include pronouns in introductions to create a space for individuals to voluntarily provide their pronouns.
- Practice using gender neutral pronouns on your own time. Feeling comfortable with these terms does not happen immediately and can require concerted effort. Be open and willing to being corrected should you make a mistake when addressing someone.
- When you see someone being misgendered, privately speak to the person who has done the misgendering and teach them how to do better next time.
- Put in the work! Read books and articles written by transgender and non-binary people.
- Speak to your workplace’s operations or human resources staff about implementing safe trainings and practices for *all* employees.
- Think before you ask. A reminder that words and actions can have an impact on others. Be mindful that while you may have the best intentions, what you say or do can have a very different impact on others.
- Always listen to transgender and non-binary people when they trust you enough to tell you about injustices they face—listen and believe them.
- Take accountability for mistakes, assumptions, or thoughts you may have had in the past regarding trans and non-binary people.
- Reminder: *You can’t tell if someone is non-binary or transgender simply by looking at them.*

THE EXPERT IN ANYTHING WAS ONCE A BEGINNER

- <https://pronouns.org/>
- <https://www.edi.nih.gov/blog/communities/what-are-gender-pronouns-why-do-they-matter>
- <https://transequality.org/trans-101/supporting-transgender-people>
- <https://www.glaad.org/transgender/allies>
- <https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq>
- <https://www.bustle.com/wellness/how-to-use-neopronouns-expert>



LET'S KEEP THE CONVERSATION GOING



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