

**Outside of the Expected: How Sex Discrimination Effects Gender Non-Conforming People**

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### Abstract

Gender roles in the workplace have been studied extensively as the United States attempts to work its way towards gender equality. We understand that jobs are gendered, with the traits of the job unconsciously being reflected in those hired. This is based upon Alice Eagly's 1987 Gender Theories of communal and agentic roles. The problem that this paper attempts to address is where gender non-conforming (GNC) people fit in this gender equality fight. It is my hypothesis that because GNC people do not adhere to the traditional traits of either gender, they are subject to additional discrimination in the workplace. I claim that GNC people assigned male at birth who are perceived as men will be "punished" or less likely to secure employment because of their defection from their assigned masculine expectations. I also attempt to describe that GNC people assigned female at birth are just as likely to experience the discrimination of women because of the perception of them as women. GNC who are androgynous are not seen as capable of performing the duties of man or woman. These statements result in the exploration of how discrimination based upon sex is more complicated than simply female/male, and the United States must bridge the gap through revised legal protection.

*Keywords:* Gender Non-Conforming, Sex Discrimination, Employment Discrimination

### **Brief Overview of Gender, Social Role Theory, and Implicit Bias**

Western culture emphasizes the gender binary (masculine versus feminine) as a point of difference in skill, dating back to the foundation of the human establishment. “Most of these beliefs can be summarized in two dimensions, which are often labeled agentic and communal (Bakan, 1966). Men, more than women, are thought to be agentic – that is, masterful, assertive, competitive, and dominant. Women, more than men, are thought to be communal – that is, friendly, unselfish, concerned with others, and emotionally expressive. These qualities are similar to those that Parsons and Bales (1955) had labeled as instrumental and expressive (or task-oriented and socioemotional). As abstract, general beliefs about men and women, these stereotypes constitute gender roles” (Eagly & Wood, 2012). These gender stereotypes are prevalent and well-studied in society and the workplace today. With the gender-pay gap in the United States at 82 cents for women of all races compared to one dollar for every man of all races based off the 2018 census, the binary gender differences in the workplace and in hiring practices are actively being refuted by progressive employers and government agencies (Bleiweis, 2020).

Alice Eagly’s Social Role Theory (SRT), initially theorized in 1987, offers an explanation as to why society has taken on these divisions in role from a biosocial perspective. It looks at the origins of social roles and how that is enacted and contributes to the situations that we find today. “In brief, we argue that sex differences and similarities in behavior reflect gender role beliefs that in turn represent people’s perceptions of men’s and women’s social roles in the society in which they live” (Eagly & Wood, 2012). In essence, behavioral differences such as chosen job industry reflect the beliefs internalized during the process of socialization of children. These general beliefs become stereotypes, and these stereotypes influence the workplace both

from a child's aspirational viewpoint as well as an employer's perspective. The association of men with agentic roles and women with communal roles has allowed the perpetuation of discrimination economically and socially.

Based upon this, Eagly affirms that "Behavior is strongly influenced by gender roles when cultures endorse gender stereotypes and form firm expectations based on those stereotypes" (Eagly, 1987). In the United States, where gender roles and sexism persevere as demonstrated by the gender pay gap, there exists a scholarly gap when an applicant or employee identifies as a mixture or none of the prescribed gender stereotypes or is uncategorizable for the employer. "Prescriptive gender stereotypes then entrench normative expectations for men's and women's behavior according to the descriptive gender stereotypes" (Cho, 2020). For a person that fails to adhere to the normative expectations of their anticipated or assigned gender expression or identity, it is my theory that there can be economically and socially catastrophic discrimination.

Discrimination is often unconscious or implicit. Discrimination is the behavior associated with implicit bias, while attitudes are known as prejudice and cognition as stereotyping (Mackie & Smith, 1998; Wilder & Simon, 2001). "Bias, therefore, influences our judgements, decisions, and understandings and leads us to make inferences in either a favorable or unfavorable manner, which may or may not be accurate" (Cho, 2020). Stereotypes formulated through one's socialization can lead to unconscious discrimination. "Implicit bias can be triggered when we encounter and evaluate people or situations that differ from those in our daily lives without full awareness or conscious control" (Greenwald & Banaji, 1995).

### **Impacts on Men, Women, and Others in Hiring Practices<sup>1</sup>**

As previously established, it is well documented that gender plays an enormous role in the workplace. A study by Leslie Zebrowitz, Daniel Tenenbaum, and Lori Goldstein found that even attributes such as facial maturity impacts hiring recommendations. “The results {of the study} revealed that discrimination based on gender and facial appearance varies with the type of job for which an applicant is being considered. Applicants who were babyfaced or female were favored for jobs requiring qualities of warmth and submission, whereas those who were maturefaced or male were favored for jobs requiring qualities of shrewdness and leadership... They were also paralleled by stereotypical perceptions of the job- relevant attributes possessed by the applicants, which suggests that the effects of applicants' gender and facial maturity are mediated by the perceived fit between their assumed attributes and the job requirements” (Zebrowitz, Tenenbaum, & Goldstein, 1991). Examples of discrimination can be found in everything from parenthood (Correll and Benard (2005) and Correll and Paik (2006)) to women having their input ignored and their performances devalued (Ridgeway and Correll 2004).

In a particularly relevant study, a group of researchers sent several curriculum vitae for an assistant professor position to a random sampling of university psychology departments and asked faculty for ranked evaluations of the applicants. The only difference in CV was the inferred gender of the individual. “The researchers found that when the new assistant professor CV had a male name, the candidate was judged by both male and female evaluators to be worthy of hire approximately 73% of the time. When the same CV had a female name, it was rated worthy of hire approximately only 45% of the time” (Steinpreis, Anders, and Ritzke 1999).

An important term to the discussion of gender in the workplace, specifically in hiring practices, is known as “Gatekeeper Bias”. “In the context of employment decisions, gatekeeper bias happens when an employment decision is based on the decision maker’s perceived preferences of the existing employers or co-workers with whom the new employee would be working.” (Bauges & Fordyce-Ruff, 2019). Not only does an applicant contend with the socially expected norms of their anticipated gender and the norms associated with their profession, but also with the anticipated gender within this particular work environment.

When “workplace suitability” is a determinant of hiring, a person who does not match the socially expected roles for men or the socially expected roles for women are at risk of double the discrimination.

### **Gender Nonconforming Individuals: A History and Conceptualization**

Within academia and branching into society, gender essentialism is widely rejected. The notion that there is an inherent identity within human beings that encourages us to act, behave, and appear a particular way is far less likely than the idea of a socially constructed gender binary for the sake of categorization. Judith Butler, a world-renowned philosopher, argues that gender is performative in nature, and is constructed through “the repeated stylization of the body, a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance, of a natural sort of being” (Butler, 1999). In other words, gender is constructed through socialization, which can then be followed with the social role theory. Butler believed that gender is more of a function of society than it is of the body. “Gender is a system of socially constructed categories – behaviors and bodily presentations are witnessed by others and gender is then ascribed upon them. Witnessing and affirmation by others is what creates the social recognition of our gender” (Havercamp, 2018). Butler conceptualized that gender is not

an identity, but that the identity is “performatively constituted” of the expressions that one outwardly exhibits in society and how those expressions are categorized (Butler, 1999). With this concept of gender being an entirely social concept created by and reaffirmed by validation from others, it is reasonable to expect that there would be those that do not accept the socialization and roles that of their assigned identity at birth. When the performance of gender, or expression, of one’s “identity” does not adhere to the sexual category one is assigned to, it is here that we come to gender non-conformity. An incongruence between one’s own traits and the socially anticipated identification. The relatively small definition of what it means to be a man or a woman within society places the non-congruent performative aspects of gender outside of the scope of normative gender expectations. “The social construction and regulation of gender creates the invisibility of those whose expression and identity exist outside of the dominant binary.” (Haverkamp, 2018).

People who do not perform gender in the way they were ascribed at birth can identify themselves in many different ways. It varies between culture, personal understanding of gender, and personal preference. The language surrounding gender politics, gender diversity, and gender identification is vast. Below is a terminology list that may be helpful for those unfamiliar [with the terms mentioned in this paper](#). It has been adopted from Andrea Haverkamp’s doctoral dissertation on Non-Binary Identities within Engineering Culture:

Cisgender: a person whose gender identity and gender assigned at birth align (e.g. a man whose gender was assigned male at birth based on external characteristics).

Gender Binary: a term that refers to the idea that there are only two genders (e.g. man/woman) and individuals should be gendered as either man or woman.

**Gender Expression:** a term that refers to individuals' external display of their gender either through clothing, demeanor, social behavior and other factors. Also referred to as gender presentation.

**Gender Fluid:** a term that is used to refer to individuals who identify in a way that flows between genders, or whose gender identity fluctuates or shifts. This shift may flow between all genders or any subset of genders.

**Gender Identity:** an individuals' internal sense of themselves as either male, female, both or neither.

**Gender Non-Conforming:** a person whose gender presentation does not align with socially-constructed gender expectations.

**Gender Normative:** a person whose gender expression aligns with socially-constructed gender expectations.

**Misgender:** a term used to describe the act of failing to acknowledge (or use) an individual's requested gender pronouns or using gendered language when referring to them (i.e. ma'am, sir, guy, girl, etc.). The possibility of being misgendered is often anxiety provoking for gender non-conforming individuals. Moreover, being misgendered is disrespectful and violent, putting the misgendered individual at risk for discrimination.

**Nonbinary:** a term used to describe individuals who do not identify within the man/woman gender binary. Individuals may use this term to describe their gender identity, or it may be used as an umbrella term for genders which are not man or woman.

**Pronoun:** The gendered shorthand term which refers to an individual in our language instead of name. It includes subjects, objects, possessive adjectives, and reflexive pronouns. For

a list of common pronouns and their usage visit

<http://web.mit.edu/trans/GenderNeutralPronouns.pdf>

Transgender: a person whose gender identity and gender assigned at birth align (e.g. a man whose gender was assigned male at birth based on external characteristics).

They/Them/Theirs: gender neutral pronouns that are preferred by some individuals who identify as nonbinary or otherwise gender non-conforming. Also used to refer to a person or group of unspecified gender. Example – “Where did Alex go, I have their pencil. I hope to see them in class. They are such a nice person.”

Gender identity and sexual orientation are intertwined, but different. Sexual orientation is informed by the person’s gender identity, as attraction is often a gendered action. For example, a lesbian is a woman-aligned person (gender identity) attracted to woman-aligned people (sexual orientation). A man is not a lesbian, though he may be attracted to women-aligned people. He would be considered heterosexual because of his gender identity.

The existing research on non-binary individuals in the workplace establishes “that being out as a nonbinary transgender person has different effects on nonbinary transgender people based on sex assigned at birth, with those assigned male at birth tending to be discriminated against in hiring but those assigned female at birth more likely to experience differential treatment once hired.” (Davidson, 2016). The U.S. Supreme Court recognized non-binary individuals for the first time in 2016, allowing Dana Zzyym to have an X on their passport to mark their intersex and non-binary identity (Discrimination Against Nonbinary People, 2021). Non-binary people do not have to medically transition (hormones, surgeries, etc.) or legally transition (gender marker, name change, etc) in order to be non-binary. There are no criteria, nor do they owe androgyny to those around them. Within Judith Butler’s theory, gender

nonconforming individuals are those who do not express binary gender or desire their gender expression to be validated within the binary by others.

### **Deviation from the Expected**

According to my theory, gender non-conforming people whose gender presentation deviates from that of the expected gender identity influences their position in hiring and within the workplace. People assumed masculine who deviate from the expected norm are less likely to be hired. GNC perceived as feminine are likely to experience the wage gap.

“Gender stereotyping is defined as an overgeneralization of characteristics, differences and attributes of a certain group based on their gender. Gender stereotypes create widely accepted biases about certain characteristics or traits and perpetuate the notion that each gender and associated behaviors are binary. Under this assumption, if a man or a woman act differently from how their gender is expected to behave there is a disconnect in the evaluator’s mind. As our society moves to a broader construct of what “gender means,” individuals who are stuck in this binary idea of gender have a difficult time wrapping their brains around individuals who do not fit into a strict gender dichotomy, or do not identify with any gender at all.” (Gender Stereotyping, n.d.).

“Gender roles and stereotypes affect men and women in other ways. Specifically, men and women may be judged by how well they conform to traditional stereotypes. In his theory of masculine gender role strain, Joespech Pleck (1976) asserted that boys and men are pressured to fulfill a standard of masculinity. Boys and men, for example, who do not fulfill the standard often suffer from low self-worth (Pleck; Sonnenstein; and Ku1993)” (Gender: Gender Roles and Stereotypes, n.d.). Because it is well established that variations in the presentation of masculinity by men are looked upon unfavorably, I propose that this applies to non-binary people who are

expected to be masculine, based upon name, appearance, or gender assigned at birth. Research shows that men who display vulnerability such as asking for help are perceived to have lower status (Rosette, Mueller, & Lebel, 2015). Men perceived to be agreeable, caring, sympathetic, or warm across a variety of industries are shown to make 18% less in income than their more assertive counterparts (Judge, Livingston, & Hurst, 2012). It is even seen that men who identify as feminists are at greater risk for workplace sexual harassment (Holland et al, 2016). If men who actually identify as men are at risk for all of these consequences, it is of the utmost importance that we recognize the possible and probably discrimination and violence that can occur should a person who is assigned male at birth and expected to participate within the workplace as a man could face. Toxic masculinity is functional and prevalent when the assumption of manhood is there, regardless of whether it actually is or not. Whether the discrimination is conscious or unconscious on the part of the supervisor, coworker, or related colleague, it is still too likely to be ignored within the discourse on workplace gender equality.

When it comes to gender nonconforming individuals assigned female at birth, who are expected to portray the same stereotypes and social roles as women, it is important to understand how discrimination may affect them in a similar way as women. When appropriating masculine traits such as assertiveness, they may be associated with the negative outcomes that happen when a woman is assertive. They may be subject to the standards of women, even though they are not, and punished for acting outside of the limits of womanhood.

My argument, essentially, is that due to the lack of traits traditionally associated with gender nonconforming individuals they are more likely to be held to what I am labelling a “quadruple standard”. Should a nonbinary person be perceived as manly, they would be expected to perform socially as a man. Should a nonbinary person be perceived as a woman, they would

be expected to perform socially as a woman. Because of this, they face the impossible challenge of navigating the workplace in a nonexistent space. Should they exhibit traits of both of the binary genders, they would be likely to be discriminated against in the same way that a man would be discriminated against for stepping outside of the both of masculinity as well as how a woman would be discriminated against for stepping outside of the box of femininity. Because nonbinary people are unable to “pass” (passing is when a transgender individual is “stealth”, or indeterminable as a trans person) because there is no expected appearance, name, or presentation for nonbinary individuals, they are likely to be categorized into a binary role. This is problematic because it erases and misgenders this person’s identity and stereotypes them into a specific role, which is a problem for even those with a binary gender. Within the workplace in our fight for equality we must make space for those who do not adhere to the traditional. We must work towards a genuine equity.

### **Current and Needed Antidiscrimination Laws**

In writing, sex, sexual orientation, and transgender status are protected federally under law. In June of 2020, *Bostock v. Clayton County Georgia* held up that firing individuals for their sexual orientation or transgender status falls under the protection of Title VII of the 1964 Civil Rights Act’s prohibition of sex discrimination. They established that “discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second” (What You Should Know, 2020). If a man is fired because he is married to a man, then the firing cannot happen without him first being a man. If a transwoman is fired because she was assigned male at birth, then her being a woman is the reason she is being fired and is illegal. In theory, this practice should protect gender nonconforming individuals, being that some of them identify as transgender. If a person is

nonbinary and is discriminated against, then they are being discriminated against based upon their adherence or non-adherence to the gender/social norm that they have been assumed to “fit” with. This is problematic and unclear.

According to the EEOC website, “The Bostock decision does not address related issues under Title VII such as dress codes, bathroom access, or locker room access, which were raised by Justice Alito’s dissent. The Court also noted that its decision did not address various religious liberty issues, such as the First Amendment, Religious Freedom Restoration Act, and exemptions Title VII provides for religious employers”, meaning that there is still ample room for discrimination against nonbinary and binary employees alike (What You Should Know, 2020) The National Transgender Discrimination Study affirms that almost all nonbinary individuals have experienced some form of workplace discrimination. 90% of non-binary individuals face discrimination, often in the form of harassment in the workplace. 19% percent of self-identifying non-binary individuals reported job loss as a result of their identities (Nonbinary Identities and the Law, 2020). As a nation, we must become more aware of what discrimination against gender nonconforming people looks like and erase the stereotypes of gender that contribute to it. Social roles are no longer the only means of survival. Division of labor can be accomplished by person, not by gender.

### **Actionable Items**

Action must be taken to ensure the inclusion of non-binary and gender diverse individuals. Below is a list of actionable items that could be used to include and protect GNC individuals.

- Consider installing gender-neutral bathrooms in the workplace to ensure bathroom safety for everyone.

- Place explicit protection in company policies to protect nonbinary people including procedures in place for grievances of discrimination
- Broaden our diversity trainings to include comprehensive gender diversity trainings
- Consider gender neutral options when writing dress codes in order to allow for comfortable gender expression
- Avoid gendered language in company materials. Consider using they when in reference to s/he
- Job postings should contain language nonstereotypical of any particular gender identity
- Create a preferred name policy and procedure in the workplace, where the employee may utilize a preferred name over a legal one. Protect the employee's privacy in regards to their legal name and gender marker.
- Include expansive health insurance to cover medical transitions
- Use pronouns in email signatures and on nametags

With the upcoming generation of adults (Gen Z) reaching adulthood in the coming years, we must make policies and laws that engage with the progressive nature of Gen Z's ideas. "There are...stark generational differences in views of how gender options are presented on official documents. Gen Z is by far the most likely to say that when a form or online profile asks about a person's gender it should include options other than "man" and "woman." About six-in-ten Gen Zers (59%) say forms or online profiles should include additional gender options, compared with half of Millennials, about four-in-ten Gen Xers and Boomers (40% and 37%, respectively) and roughly a third of those in the Silent Generation (32%)." (Parker & Igielnik, 2021). Not only that, but 1 in 6 Gen Z

adults identify as LGBT (O’Kane, 2021). With the upcoming generations being more and more accepting and fluid, we must accommodate and support the future of business with progressive policies. For the sake of everyone, deconstruct the gendered performance of employment and create a safe and productive space for all identities and expressions.

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