

[REDACTED] (HEIW)

From: [REDACTED]@stonewall.cymru>
Sent: 12 December 2019 11:56
To: [REDACTED] (HEIW)
Cc: [REDACTED] (HEIW)
Subject: RE: HEIW: Employment reference query
Attachments: employee_lifecycle.pdf

Hia [REDACTED]

Thanks for your query, I've had to wait to get some time in with our Trans Engagement Officer as we are still without a Policy Officer and wanted to ensure we got the correct information for you. I've attached a copy of our 'Employee Lifecycle' toolkit which may be of some help and detailed some outcomes below:

In the scenario where the candidate has disclosed the change to their new employer, I am imagining the request might come in the same as somebody whose name has changed through marriage i.e. x previously known as y. Matched to a date of birth or NI number, the references could be completed as usual.

- This is exactly right yes, any change of name processes can be completed in the same manor as a change of name through marriage or divorce. However it would be a good opportunity to train any staff with HR, new starter, information processing responsibilities in their lawful and moral duties of not disclosing any previous names. I'm not sure what the law is regarding disclosing a previous surname in the occurrence of marriage/civil partnership but doing so when someone has transitioned or is transitioning is unlawful.

If they have not disclosed the change, however, how do we respond whilst still ensuring confidentiality and not disclosing the change in gender in respect of GDPR?

- If a person has not disclosed their trans status to a new employer but you can identify said employee through other details such as NI number etc, It's worth asking the new employer if the member of staff is known by any other names. Just asking this would not be outing someone and the new employer can rely the question to the individual without outing them or enquiring about their gender identity.

Without any contact from the ex-employee, I would simply return the request as not known. Even if I could find a match using NI number or DoB, I would still return the request because of the name mis-match.

- Unfortunately I don't have a concrete answer for this one as it is so dependant on an organisations internal processes and structure. I wouldn't be able to say for sure if this is the correct course of action from a legal perspective. I'd suggest using the same or similar processes one would if a name change had occurred due to marriage and the individual had not told you about it beforehand. Telling a new employer that 'you have a different name' is not advisable but asking if the individual goes by any toher names is far more inconspicuous.

With contact from the ex-employee advising us in advance that we are likely to receive an employment Reference request for them, but in a different name, what should we do? I think I would expect some documentation (deed poll) to verify the change in name before I would be happy to return the reference in the new name rather than the one on our records.

- An individual who is, has, or is planning to transition doesn't need to provide a deed poll in these instances, deed polls are only required in instances of changing government and/or financial documentation such as passports, bank accounts and pensions. For a workplace reference I'd suggest not taking this course of action. If a person details match in all other areas such as NI numbers, date of birth etc this should suffice.

I hope this helps, please do let me know if there's any outstanding queries.

Diolch,

Stonewall Cymru

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Please write to me in Welsh or English

Address: *Transport House, 1 Heol y Gadeirlan, Caerdydd, CF11 9SB*

Ffôn / Phone: [REDACTED]

Llinell Wybodaeth/Info Line: 08000 50 20 20

Website: www.stonewall.cymru

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Stonewall Equality Ltd, 192 St John Street, London, EC1V 4JY

From: [REDACTED]@wales.nhs.uk>

Sent: 27 November 2019 16:38

To: [REDACTED]@stonewall.cymru>

Cc: [REDACTED] (HEIW) [REDACTED]@wales.nhs.uk>; [REDACTED]@wales.nhs.uk>

Subject: HEIW: Employment reference query

Hi [REDACTED]

I am reviewing / developing our suite of policies at HEIW and am responsible for drafting EIAs for each of them.

I am currently working on the Employment Reference policy and have received a challenging question – hoping you can help?

There is no legal requirement to give an employment reference, but HEIW is committed to responding to employment reference requests in a way which is fair, accurate and does not unduly hinder the opportunity of employment in the future.

How should we tackle a request for an employment reference from an ex-employee who has transitioned since they worked for us i.e. potentially we would receive the request in a name different to the one they were known as when they worked here / the one on record?

In the scenario where the candidate has disclosed the change to their new employer, I am imagining the request might come in the same as somebody whose name has changed through marriage i.e. x previously known as y. Matched to a date of birth or NI number, the references could be completed as usual.

If they have not disclosed the change, however, how do we respond whilst still ensuring confidentiality and not disclosing the change in gender in respect of GDPR?

- Without any contact from the ex-employee, I would simply return the request as not known. Even if I could find a match using NI number or DoB, I would still return the request because of the name mis-match.
- With contact from the ex-employee advising us in advance that we are likely to receive an employment Reference request for them, but in a different name, what should we do? I think I would expect some documentation (deed poll) to verify the change in name before I would be happy to return the reference in the new name rather than the one on our records.

Although we are not involved in employment history checks for our new starters (this is done on our behalf by NWSSP, Shared Services), the same principles must apply?

Any other best practice around this topic would be gratefully received.
I look forward to hearing back from you.

Thank you,

[Redacted]

[Redacted]

[Redacted]

Addysg a Gwellia Iechyd Cymru (AaGIC) - Health Education and Improvement Wales (HEIW)

Ffôn:/Phone [Redacted] e-bost:/[Redacted]

aagic.gig.cymru / heiw.nhs.wales



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We welcome correspondence in Welsh and this will not result in a delay. Please let us know if you would like Welsh/English/bilingual correspondence in the future.

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