An abstract graphic on the left side of the page. It features a large orange arrow pointing up and to the right. Below it, a yellow curved shape forms part of a larger circle. A purple arrow points up and to the left, and a red arrow points up and to the right. A green cross is positioned below the purple arrow. The background is a light blue gradient.

Equality for Trans Teachers

Introduction

The NASUWT believes that all pupils/students and staff in schools and colleges have a right to learn and work in a safe and secure environment where they are treated with dignity and feel valued and respected.

This guidance aims to provide an overview of the law and to support employers of teachers to ensure their workplaces are trans-inclusive.

‘Trans’ is a term which identifies the spectrum of people who feel that the sex they were assigned at birth does not match with, or conform to, their own sense of who they are.

Many trans people wish to change their name and personal details and live as a member of the gender with which they identify. This may, although by no means always, involve hormone therapy and surgery. The process is referred to as ‘gender reassignment’ or ‘transitioning’.

It is important to recognise that it may not always be known when a trans person is working in a particular workplace. If someone transitions whilst on the staff then it will be known.

There could be people who know they are trans but have not come out, others who are questioning their gender, or people who transitioned some time ago and are not known. Being aware of this is also extremely important to ensure inclusion.

Legislation provides the minimum standard that should be expected in terms of equality. It is good practice for employers to focus not just on legal requirements but also the wider wellbeing of staff and how they can ensure a fully inclusive workplace.

The Law

Equality Act 2010

It is unlawful to discriminate against pupils, staff or members of the public on the grounds of gender reassignment.

A person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex.

Provisions within the 2010 Act mean that employers must have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity; and
- foster good relations.

As employees, teachers and other members of the workforce are legally protected from discrimination on the basis of:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion and belief;
- sex;
- sexual orientation.

Employees should, therefore, be protected by their employer from any of the following actions:

- **direct discrimination** – acts of overt discrimination to a person’s detriment, such as denying them promotion on the basis of a protected characteristic;
- **indirect discrimination** – a discriminatory provision, criterion or characteristic, such as a promotion requirement or working pattern, that cannot be objectively justified;
- **harassment** – acts of unwanted conduct that threaten or violate a person’s dignity, such as making unreasonable demands or bullying;
- **victimisation** – particularly after making a complaint about discrimination or lodging a claim at an employment tribunal.

Religion or belief may not be used to discriminate against trans people.

The legislation makes clear that it is not necessary for people to have any medical diagnosis or treatment to gain gender reassignment protection; it is a personal process of changing gender expression (outward presentation of gender) from the gender they were assigned at birth to the gender they know themselves to be, or ‘self-identified gender’.

Employers can be held responsible for the actions of their staff under the Act, even if the actions are without the employers’ knowledge or approval. Employees are also individually responsible for their own discriminatory actions.

Schools and colleges are covered by the Public Sector Equality Duty. They must eliminate discrimination, provide equality of opportunity and foster good relationships between groups with protected characteristics.

The Human Rights Act 1988

This provides additional protection against unnecessary intrusion by the State into private and family life.

It includes personal dignity, the interaction a person has with others, both in private and in public, and respect for confidential information, particularly regarding the storage and sharing of such information.

The Data Protection Act 1998

Under this Act, data relating to the protected characteristic of gender reassignment is regarded as 'sensitive information' and should not be released without an individual's permission.

The Gender Recognition Act 2004

This enables a person, aged 18 or over, to change their legal gender to have the gender status, for all purposes, which aligns with their gender identity rather than their birth-assigned sex.

The Act gives trans people the right to obtain a new birth certificate. A Gender Recognition Certificate (GRC) can only be obtained after two years in the 'new' role.

Whether or not a person has a GRC should have no bearing on employment or employment protections, apart from adding an extra layer of privacy.

Employers should treat people in accordance with their gender identity, regardless of whether or not they have a GRC, and should not ask trans staff if they have one.

The Act also includes very important measures to protect the privacy of a trans person. It makes it a criminal offence for a person who has acquired protected information in an official capacity, such as through a recruitment process, to disclose that information to any other person. The offence does not apply if the individual has given their permission to the disclosure of such information.

Not all trans people apply for a GRC. It is purely a personal decision and the process of obtaining a GRC is not easily accessible to all trans people.

Disclosure and Barring Service (DBS)

There is a confidential DBS process specifically for trans applicants, who should contact the DBS-sensitive applications line on 0151 676 1452, or email sensitive@dbs.gsi.gov.uk for further advice about completing the form.



Issues for people transitioning in the workplace

The person undergoing transition should be at the core of any decision-making process in the workplace and should feel in control throughout the process. Managers should consult with the trans person regarding the nature and frequency of the support to be provided during and after the transition process.

Issues to be considered include:

- **Dates and timescales** – when key changes will be taking place and how they fit into any relevant work patterns and deadlines. Any changes will depend on the individual, but could include name, documentation and physical changes.
- **Records and systems** – consideration should be given to what needs to be changed, when this will happen and what will happen to ‘previous’ records. These could include photographs and biographies on websites and newsletters and also historical information on personal records. References to the trans person’s previous name should be removed wherever possible. Breaches of confidentiality are treated in the same manner as disclosure of the highly personal details of any other employee protected under the Data Protection Act 1998.
- **Communication** – how and when the individual wishes to inform other staff, governors, students and parents. This is an individual choice; what works for one person may not work for another. Any announcements should, however, include important issues such as how to address the trans person (new name, correct pronoun), how to support them and how to deal with questions from others without breaching confidentiality.
- **Time off for medical appointments and treatment** – time off for appointments and treatments associated with gender reassignment is

protected under the Equality Act 2010. Therefore, such absences cannot be used against trans people when, for instance, considering promotion opportunities or redundancy. Absences for gender reassignment may be recorded, but not used, in any absence management process, and rather seen as a reasonable adjustment.

- **Use of toilets and changing facilities** – staff who have declared their trans status should be free to use the facilities appropriate to their self-identified gender.
- **Agreeing any dress code requirements** – where an employer has a dress code, it is good practice for this to have the flexibility to accommodate the process of transition from one gender role to another. Best practice is that dress codes are not gendered at all, but simply a list of clothes it is acceptable for staff to wear.
- **A contingency plan for dealing with media enquiries** – Anyone taking incoming calls must be more alert than usual to the possibility that the Press, in particular, are likely to invite comment if the news of a member of staff's transition has leaked out. It is advisable to prepare a generic statement, which can then be made public if necessary and appropriate. This should state that the employer supports fully all members of its community, especially those with any of the protected characteristics, and it is paramount that everyone is treated with respect and that the right to privacy, in law, is respected. Any statement, and its use, should be agreed by all parties involved.
- **Raising awareness** – employers have a responsibility to inform their staff about trans issues and the implications for working practices. This is a valuable way of overcoming prejudice and securing an inclusive environment for trans people.

Sources of Support and Information

In addition to the NASUWT, the following are a selection of sources of support and information.

Education Support Partnership

A confidential telephone counselling, support and advice service for teachers. 08000 562 561.

Gendered Intelligence

A community-interest company which works with the trans community and all those who impact on trans lives – employers, educators and service providers of all kinds; it provides training, consultancy, youth workshops, mentoring and youth groups amongst other services. www.genderedintelligence.co.uk

Gender Identity Research and Education Society (GIRES)

A volunteer-operated membership charity that, in collaboration with the other groups in its field, hears, helps, empowers and gives a voice to trans and gender non-conforming individuals, including those who are non-binary and non-gender, as well as their families. www.gires.org.uk

UK Government Equalities Office

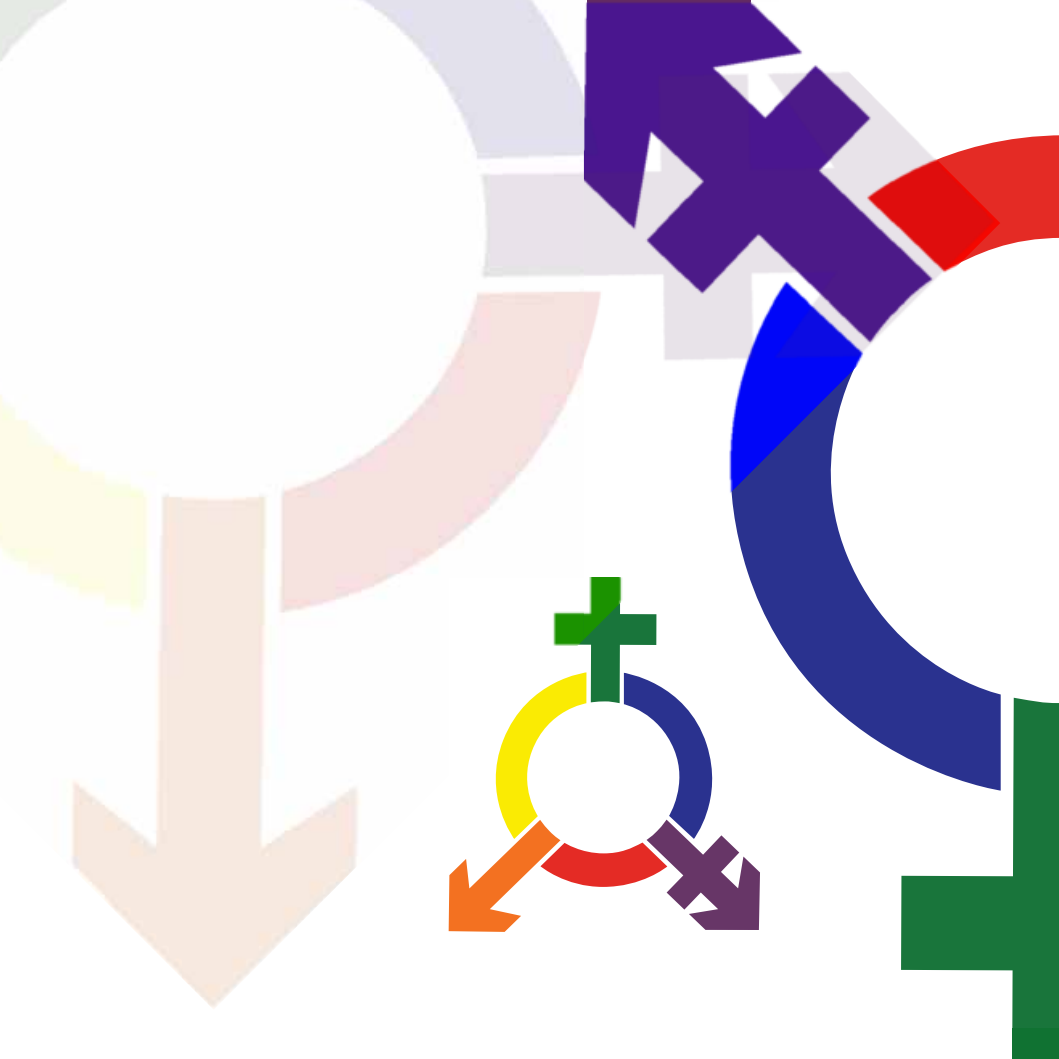
The Government Equalities Office has produced comprehensive guidance for employers entitled 'The recruitment and retention of transgender staff'. www.gov.uk

NASUWT  **CYMRU**
Undeb yr Athrawon The Teachers' Union

Tel: 029 2054 6080

E-mail: rc-wales-cymru@mail.nasuwat.org.uk

Website: www.nasuwat.org.uk





Cydraddoldeb ar gyfer Athrawon Traws

Cyflwyniad

Mae'r NASUWT yn credu bod gan yr holl ddisgyblion/myfyrwyr a staff mewn ysgolion a cholegau hawl i amgylchedd diogel lle y maen nhw'n cael eu trin gydag urddas ac yn teimlo eu bod yn cael eu gwerthfawrogi a'u parchu.

Mae'r canllawiau hyn yn anelu i ddarparu trosolwg o'r gyfraith a chefnogi cyflogwyr athrawon i sicrhau bod eu gweithleoedd yn draws-gynhwysol.

Mae 'Traws' yn derm sy'n nodi'r sbectrwm o bobl sy'n teimlo nad yw'r rhyw y rhoddwyd iddyn nhw ar enedigaeth yn gweddu, nac yn cydymffurfio â'u teimlad eu hunain o bwy ydyn nhw.

Mae llawer o bobl draws yn dymuno newid eu henwau a'u manylion personol a byw fel aelod o'r rhyw y maen nhw'n uniaethu ag ef. Gall hyn, ddim ar unrhyw gyfrif bob amser, gynnwys therapi hormonau a llawfeddygaeth. Cyfeirir at y broses hon fel aillbennu rhywedd neu 'drawsnewid'.

Mae'n bwysig cydnabod nad yw bob amser yn wybyddus pan mae unigolyn sy'n draws yn gweithio mewn gweithle penodol. Os yw rhywun yn trawsnewid tra maen nhw ar y staff, bydd hynny'n wybyddus.

Gallai fod pobl yn gwybod eu bod yn draws ond nad ydyn nhw wedi dod allan, bydd eraill yn cwestiynu eu rhyw, neu bobl a drawsnewidiodd beth amser yn ôl ac nad ydyn nhw'n wybyddus. Mae bod yn ymwybodol o hyn yn bwysig eithriadol er mwyn sicrhau cynhwysiant.

Mae deddfwriaeth yn darparu'r safon isaf y dylid ei ddisgwyl yn nhermau cydraddoldeb. Mae'n ymarfer da i gyflogwyr ganolbwyntio nid yn unig ar y gofynion cyfreithiol, ond yn ogystal ar lesiant ehangach y staff a sut y gallan nhw sicrhau gweithle hollol gynhwysol.

Y Gyfraith

Deddf Cydraddoldeb 2010

Mae'n anghyfreithlon gwahaniaethu yn erbyn disgyblion, staff neu aelodau'r cyhoedd ar sail ailbennu rhywedd.

Mae gan unigolyn y nodwedd warchoddedig o ailbennu rhywedd os ydyn nhw'n bwriadu ymgymryd, neu'n ymgymryd neu wedi ymgymryd â phroses (neu ran o broses) ar gyfer y diben o ailbennu eu rhywedd drwy newid nodweddion ffisiolegol neu nodweddion rhywedd eraill.

Mae darpariaethau o fewn Deddf 2010 yn golygu bod yn rhaid i gyflogwyr roi sylw dyledus i'r angen i:

- ddileu gwahaniaethu, aflonyddu ac erledigaeth anghyfreithlon;
- hyrwyddo cydraddoldeb cyfleoedd; a
- meithrin perthnasau da.

Fel gweithwyr, mae athrawon ac aelodau eraill o'r gweithle yn cael eu hamddiffyn drwy'r gyfraith rhag gwahaniaethu ar sail:

- oed;
- anabledd;
- ailbennu rhywedd;
- priodas a phartneriaeth sifil;
- beichiogrwydd a mamolaeth;
- hil;
- crefydd a chred;
- rhyw;
- cyfeiriadedd rhywiol.

Felly, dylai gweithwyr, gael eu hamddiffyn gan eu cyflogwr rhag unrhyw un o'r camau gweithredu canlynol:

- **gwahaniaethu uniongyrchol** – gweithredoedd o wahaniaethu agored sy'n anfanteisio unigolyn, fel gwrthod dyrchafiad iddyn nhw ar sail nodwedd warchoddedig;
- **gwahaniaethu anuniongyrchol** – darpariaeth, maen prawf neu nodwedd wahaniaethol, fel amod dyrchafu na ellir ei chyfiawnhau'n wrthrychol;
- **afionyddu** – gweithredoedd o ymddygiad diangen sy'n bygwth neu'n herio urddas unigolyn, fel gwneud gofynion afresymol neu fwlio;
- **erledigaeth** – yn arbennig ar ôl cwyno am wahaniaethu a gwneud cais mewn tribiwnlys cyflogaeth.

Ni ellir defnyddio crefydd na chred i wahaniaethu yn erbyn pobl draws.

Mae'r ddeddfwriaeth yn ei gwneud yn eglur nad yw'n angenrheidiol i bobl gael unrhyw ddiagnosis neu driniaeth feddygol i ennill amddiffyniad ailbennu rhywedd; proses bersonol o newid mynegiant rhywedd (cyflwyniad allanol o rywedd) o'r rhywedd yr oedd ganddyn nhw ar enedigaeth i'r rhyw y maen nhw'n gwybod mai hwnnw yw'r un iddyn nhw, neu 'rhyw y maen nhw'n yn ei adnabod eu hunain'.

Gall cyflogwyr fod yn gyfrifol am gamau gweithredu eu staff o dan y Ddeddf, hyd yn oed os yw'r camau gweithredu heb wybodaeth na chymeradwyaeth y cyflogwyr. Yn ogystal, mae gweithwyr yn gyfrifol yn unigol am eu camau gweithredu gwahaniaethol eu hunain.

Mae ysgolion a cholegau yn cael eu cynnwys yn Nyletswydd Cydraddoldeb y Sector Cyhoeddus. Mae'n rhaid iddyn nhw ddileu gwahaniaethu, darparu cydraddoldeb cyfleoedd a meithrin perthynas dda rhwng grwpiau â nodweddion gwarchoddedig.

Deddf Hawliau Dynol 1988

Mae hon yn darparu amddiffyniad yn erbyn ymyrraeth ddiangen gan y Wladwriaeth i fywyd preifat a theuluol.

Mae'n cynnwys urddas personol, rhyngweithiad yr unigolion gydag eraill, yn breifaf ac yn gyhoeddus, a pharch am wybodaeth gyfrinachol, yn arbennig felly mewn perthynas â storio a rhannu gywbodaeth o'r fath.

Deddf Gwarchod Data 1998

O dan y Ddeddf hon, mae data sy'n ymwneud â nodwedd warchoddedig aibennu rhywedd yn cael ei weld fel 'gywbodaeth sensitif' ac ni ddylai gael ei rhyddhau heb ganiatâd yr unigolyn.

Deddf Cydnabod Rhyw 2004

Mae hon yn galluogi unigolyn, sy'n 18 oed neu'n hŷn, newid eu rhywedd cyfreithiol i gael y statws rhywedd, ar gyfer pob diben, sy'n alinio â'u hunaniaeth o ran rhywedd yn hytrach na'r rhywedd a roddwyd iddyn nhw ar enedigael.

Mae'r Ddeddf yn rhoi hawl i bobl draws i gael tystysgrif geni newydd. Gellir cael Tystysgrif Cydnabyddiaeth Rhyw yn unig (TCRh) ar ôl bod yn y rôl 'newydd' am ddwy flynedd.

Ni ddylai'r ffaith fod gan unigolyn TCRh neu beidio gael unrhyw effaith ar gyflogael na gwarchod cyflogael, ar wahân i ychwanegu haen ychwanegol o breifatrwydd.

Dylai cyflogwyr drin pobl yn unol â'u hunaniaeth o ran rhywedd, heb ystyried os oes ganddyn nhw TCRh ai peidio, ac ni ddylen nhw ofyn i staff traws a oes ganddyn nhw un.

Yn ogystal, mae'r Ddeddf yn cynnwys mesurau pwysig iawn i amddiffyn preifatrwydd unigolyn traws. Mae'n dramgwyyd i unigolyn sydd wedi cael

gwybodaeth warchoddedig yn rhinwedd ei swydd, megis drwy broses recriwtio, ddatgelu'r wybodaeth i unrhyw unigolyn arall. Nid yw'r tramgwydd yn berthnasol os yw'r unigolyn wedi rhoi eu caniatâd i ddatgelu gwybodaeth o'r fath.

Nid yw pob unigolyn traws yn gwneud cais am TCRh. Penderfyniad personol hollol yw hyn ac nid yw'r broses o gael TCRh yn hygyrch iawn i holl bobl draws.

Y Gwasanaeth Datgelu a Gwahardd (GDG)

Ceir proses GDG gyfrinachol yn benodol ar gyfer ymgeiswyr traws, a ddylai gysylltu â'r llinell geisiadau sensitif ar 0151 676 1452, neu anfon e-bost at sensitive@dbs.gsi.gov.uk am gyngor pellach ynglŷn â chwblhau'r ffurflen.

Materion ar gyfer pobl sy'n trawsnewid yn y gweithle

Dylai'r unigolyn sy'n ymgymryd â'r trawsnewid fod wrth graidd unrhyw broses gwneud penderfyniadau yn y gweithle a dylai deimlo ei fod mewn rheolaeth drwy'r broses. Dylai rheolwyr ymgynghori â'r unigolyn traws ynglŷn â natur ac amllder y gefnogaeth sydd i'w darparu yn ystod ac ar ôl y broses drawsnewid.

Mae materion i'w hystyried yn cynnwys:

- **Dyddiadau ac amserlenni** – pan fydd newidiadau allweddol yn digwydd a sut y maen nhw'n cydweddu ag unrhyw batrymau gwaith a dyddiadau cau perthnasol. Bydd unrhyw newidiadau yn dibynnu ar yr unigolyn, ond gallen nhw gynnwys enw, dogfennaeth a newidiadau corfforol.
- **Cofnodion a systemau** – dylid ystyried yr hyn sydd angen ei newid, pryd y bydd hyn yn digwydd a beth fydd yn digwydd i gofnodion 'blaenorol'. Gallai'r rhain gynnwys lluniau a bywgraffiadau ar wefannau a chylchlythyrau, yn ogystal â gwybodaeth hanesyddol ar gofnodion personol. Dylid cael gwared â chyfeiriadau at enw blaenorol yr unigolyn traws lle bo hynny'n bosibl. Mae torri cyfrinachedd yn cael ei drin yn yr un modd â datgelu manylion eithriadol o bersonol o unrhyw weithiwr arall sy'n cael ei amddiffyn o dan Ddeddf Gwarchod Data 1998.
- **Cyfathrebu** – sut a phan mae'r unigolyn yn dymuno rhoi gwybod i staff eraill, llywodraethwyr myfyrwyr a rhieni. Mae hyn yn ddewis unigol; gall beth sy'n gweithio i un unigolyn beidio â gweithio i un arall. Fodd bynnag, dylai unrhyw gyhoeddiadau gynnwys materion pwysig fel sut i gyfarch yr unigolyn traws (enw newydd, rhagenw cywir), sut i'w cefnogi a sut i ymdrin â chwestiynau gan eraill heb dorri cyfrinachedd.
- **Amser i ffwrdd ar gyfer apwyntiadau a thriniaeth feddygol** – mae amser i ffwrdd ar gyfer apwyntiadau a thriniaethau sy'n cysylltu ag ailbennu rhywedd yn cael ei amddiffyn o dan Ddeddf Cydraddoldeb 2010. Yn y modd hynny, ni

ellir defnyddio absenoldebau o'r fath yn erbyn pobl draws wrth, er enghraifft, wrth ystyried cyfleoedd am ddyrchafiad neu ddiswyddo. Gall absenoldebau ar gyfer ailbennu rhywedd gael eu cofnodi, ond ni ellir eu defnyddio mewn unrhyw broses reoli absenoldeb, ac yn hytrach maen nhw'n cael eu gweld fel addasiad rhesymol.

- **Defnyddio toiledau a chyfleusterau newid** – dylai staff sydd wedi datgan eu statws traws allu defnyddio'r cyfleusterau priodol i'r rhyw y maen nhw'n ei adnabod eu hunain.
- **Cytuno ar unrhyw ofynion ynglŷn â sut i wisgo** – pan mae gan gyflogwr reolau ynglŷn â sut i wisgo, mae'n ymarferer da i hyn gael yr hyblygrwydd i gynnwys y broses drawsnewid o un rôl rywedd i un arall. Yr ymarferer gorau yw rheolau ynglŷn â sut i wisgo nad ydyn nhw yn dibynnu ar rywedd o gwbl, ond yn syml, rhestr o ddillad sy'n dderbyniol i staff eu gwisgo.
- **Cynllun wrth gefn er mwyn ymdrin ag ymholiadau gan y cyfryngau** – Mae'n rhaid i unrhyw un sy'n derbyn galwadau mewnol fod yn fwy effro nag arfer i'r posibilrwydd fod y Wasg, yn benodol, yn debygol o wahodd sylwadau os daw newyddion am aelod o staff sydd wedi trawsnewid yn hysbys. Y cyngor yw paratoi datganiad cyffredinol, a ellir wedyn ei wneud yn gyhoeddus os oes angen a'i fod yn briodol. Dylai hwn ddatgan nad yw'r cyflogwr yn cefnogi holl aelodau ei gymuned yn llawn, yn arbennig felly'r rhai hynny gyda nodweddion gwarchoddedig, ac mae o'r pwys mwyaf fod pawb yn cael ei drin gyda pharch a bod yr hawl i breifatrwydd, mewn cyfraith, yn cael ei pharchu. Dylai unrhyw ddatganiad, a'r modd y mae'n cael ei ddefnyddio, gael ei gytuno gan yr holl bartïon sydd ynghlwm ag ef.
- **Codi ymwybyddiaeth** – mae gan gyflogwyr gyfrifoldeb i roi gwybod i'w staff ynglŷn â materion traws a'r goblygiadau ar gyfer ymarferion gweithio. Mae hyn yn ffordd werthfawr o oresgyn rhagfarn a sicrhau amgylchedd cynhwysol ar gyfer pobl draws.

Ffynonellau Cefnogaeth a Gwybodaeth

Yn ychwanegol i'r NASUWT, mae'r canlynol yn ddetholiad o ffynonellau o gefnogaeth a gwybodaeth.

Partneriaeth Cefnogi Addysg

Gwasanaeth cynghori, cefnogaeth a chyngor cyfrinachol dros y ffôn. Lloegr: 08000 562 561.

Gendered Intelligence

Cwmni buddiannau cymunedol sy'n gweithio gyda'r gymuned draws a phob un o'r rhai hynny sy'n effeithio ar fywydau pobl draws - cyflogwyr, addysgwyr a darparwyr gwasanaethau o bob math; mae'n darparu hyfforddiant, ymgynghoriad, gweithdai ieuencid, mentora a grwpiau ieuencid ymysg gwasanaethau eraill. www.genderedintelligence.co.uk

Gender Identity Research and Education Society (GIRES)

Elusen o aelodau sy'n cael ei gweithredu gan wirfoddolwyr, mewn cydweithrediad â grwpiau eraill yn ei faes, sy'n clywed, helpu, grymuso a rhoi llais i unigolion traws ac unigolion nad ydyn nhw'n cydymffurfio â rhywedd, yn cynnwys y rhai hynny nad ydyn nhw'n ddeuol a'r rhai hynny sy'n teimlo nad oes ganddyn nhw ryw, yn ogystal â'u teuluoedd. www.gires.org.uk

Swyddfa Cydraddoldeb Llywodraeth y DU

Mae Swyddfa Cydraddoldebau'r Llywodraeth wedi cynhyrchu canllawiau cynhwysfawr ar gyfer cyflogwyr o'r enw 'The recruitment and retention of transgender staff'. www.gov.uk

NASUWT  **CYMRU**

Undeb yr Athrawon **The Teachers' Union**

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E-bost: rc-wales-cymru@mail.naswt.org.uk

Gwefan: www.naswt.org.uk

