

BUSINESS TRAVEL TO THE USA

What to consider as trans*, inter*, and non-binary employees and their companies

BACKGROUND

As of January 20, 2025, a new legal regulation on gender recognition in official documents is in effect in the United States. Executive Order 14168 requires all federal agencies to only recognize the genders “male” and “female,” based on the sex assigned at birth.

This decision marks a political rollback in terms of recognizing gender diversity and impacts entry and visa procedures as well. People who are most affected include individuals with non-binary or intersex gender entries (“diverse” or “x”/no entry)¹ as well as trans* individuals whose birth certificates do not match their current identification documents (e.g., after transition).

In June 2025, a federal judge temporarily overturned the decree in part, allowing U.S. citizens to once again obtain passports with an “x” gender entry. However, it remains unclear what impact this ruling will have on travellers from abroad.

As a result, entry into the United States continues to be legally uncertain and potentially problematic for many trans*, inter*, and non-binary individuals — even in the context of standard business travel. For companies sending employees abroad, this results in a clear need for action.

WHAT ARE THE RISKS?

- **Visa applications may be denied** if documents (e.g., birth certificate and ID) do not match
- **Intense questioning or refusal** at the U.S. border
- **Criminal consequences** if the gender indicated on the visa application does not match the birth-assigned gender (worst case scenario: arrest/charges on site)
- **Airlines may refuse transport:** In some cases, airlines may deny boarding, as they are partially responsible for ensuring that all passengers meet entry requirements for the destination country
- **Additionally:** even binary cis individuals with an androgynous appearance may face increased scrutiny or rejection, regardless of their documentation

WHAT DOES THIS MEAN IN PRACTICE?

At this point, neither PROUT AT WORK nor the German Federal Foreign Office can reliably predict what will happen when a person with a non-binary or no gender entry attempts to enter the U.S., or when a person’s appearance does not match the gender assigned at birth.

1 Outside of Germany, gender markers such as “diverse” (d) or leaving the gender field blank are often not recognized. Internationally, the “x” marker is becoming more established alongside “male” (m) and “female” (f), particularly in travel documents. However, legal and practical recognition depends heavily on national regulations.



FOR EMPLOYERS: WHAT NEEDS TO BE DONE??

- > **Plan early:** Initiate travel plans early to clarify any risks
- > **Check legal certainty:** Offer and cover legal counsel if needed
- > **Reconsider representation:** Is an alternative representative possible or advisable?
- > **Respect data sensitivity:** No obligation to disclose personal characteristics
- > **Raise awareness:** Educate HR, leadership and travel management teams
- > **Take “Fürsorgepflicht” (Duty of Care) seriously:** No obligation for queer employees to travel to the U.S. — alternative solutions must be explored

FOR AFFECTED EMPLOYEES: WHAT YOU CAN DO

- > **Check your documents:** Are gender entries (e.g., passport, birth certificate) consistent?
- > **Contact the U.S. Embassy/Federal Foreign Office:** Seek information early
- > **Use legal counsel:** Include queer- and trans*/inter*-specific legal advisors
- > **Request support:** Claim your right to safe and respectful working conditions
- > **Avoid outing:** You are not required to disclose sensitive information internally

NOTES ON TRAVEL DOCUMENTS AND PERSONAL DATA

New passport without “x” entry

Individuals with a “diverse” or no gender entry may, under certain conditions, obtain a passport with a binary gender marker. This requires a medical certificate attesting to a “variant of sex development.”

If a binary sex was assigned at birth, it must be selected — regardless of a person’s current appearance. Otherwise, one may choose “male” or “female” once. Whether such a change makes sense should be carefully considered on a case-by-case basis. The issuing authority will also assess whether the criteria are met.

sbgg.info/passgesetz

Experience reports on entry

Some reports suggest that consistent gender “passing” often results in smooth entry. However, this is no guarantee but these experiences may help assess the risk.

Unclear data access

It is difficult to determine which personal data U.S. authorities can actually access. This may include communication data (e.g., WhatsApp chats), past entries in birth registries, or stored biometric data such as fingerprints — particularly if a person previously travelled to the U.S. with a different gender marker in the passport.

HELPFUL CONTACT POINTS & RESOURCES²

- German Federal Foreign Office: auswaertiges-amt.de
- U.S. Embassy in Germany: de.usembassy.gov

Advocacy Groups

- ILGA Europe: ilga-europe.org
- Bundesverband Trans*: bundesverband-trans.de and sbgg.info/passgesetz
- Bundesverband Intergeschlechtliche Menschen e.V.: im-ev.de
- dgti e.V. – German Society for Transidentity and Intersexuality: dgti.org

² For all questions regarding entry, especially in legally sensitive or unclear situations, it is essential to contact the Federal Foreign Office or the U.S. Embassy. As responsible federal authorities for foreign affairs, they have up-to-date information on country-specific entry regulations, security situations, and consular protection and can offer appropriate guidance or support.