

January 2021

**U.S. Commission on Civil Rights
Policy Statement on Sexual Orientation and Gender Identity Discrimination**

It is the policy of the U.S. Commission on Civil Rights to provide a workplace free from discrimination on the basis of sexual orientation or gender identity. As discussed below, this type of discrimination is not permitted under Executive Orders or under Title VII of the Civil Rights Act of 1964.

Per the EEOC's decisions and guidance, federal employees and applicants for employment may file a claim of discrimination under Title VII based on sexual orientation or gender identity under the EEO complaints process set forth in 29 C.F.R. Part 1614. An employee or applicant can initiate the EEO complaints process by contacting the Commission's EEO Director Latrice Foshee at 202-376-7665 or email lfoshee@usccr.gov.

Prohibition Against Discrimination Based on Sexual Orientation

Executive Order 13,087 entitled *Further Amendment to Executive Order 11478, Equal Opportunity in the Federal Government* (as amended by Executive Order 13,087 and 13,152), signed May 28, 1998, further provides:

It is the policy of the government of the United States to provide equal opportunity in federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation or status as a parent, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the federal government, to the extent permitted by law.

This Executive Order ensures that there is a uniform policy throughout the Federal Government by adding sexual orientation to the list of categories for which discrimination is prohibited (race, color, religion, sex, national origin, disability or age). The EEOC has also held that discrimination against an individual because of that person's sexual orientation is discrimination because of sex and therefore prohibited under Title VII. *See David Baldwin v. Dep't of Transportation*, EEOC Appeal No. 120133080 (July 15, 2015).

Prohibition Against Discrimination Based on Gender Identity

In 2014, Executive Order 13,672 reaffirmed the non-discrimination against employees in all aspects of federal employment and added “gender identity” to the list of categories already protected from employment discrimination thereby clarifying that non-discrimination protections also extend to transgender individuals. The EEOC has also held that discrimination against an individual on the basis of gender identity discrimination is prohibited under Title VII of the Civil Rights Act of 1964. *See Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012).

Additional Processes and Remedies for Relief

Per the Executive Orders, federal agencies must also retain procedures that permit employees and applicants to file complaints of sexual orientation discrimination and gender identity under the Executive Order process. Thus, federal employees and applicants may elect either process or file a dual claim under both processes.

If you believe you have been discriminated against based upon sexual orientation or gender identity, you may seek assistance under certain circumstances from the Merit Systems Protection Board, the Office of Special Counsel, a Negotiated Grievance Procedure, or an Agency Grievance Procedure.

- **Merit Systems Protection Board (MSPB)** - If you wish to appeal an agency action, you should contact the MSPB at the address below as soon as possible after the action was taken to determine whether it is an action upon which the MSPB may rule.

Merit Systems Protection Board

1615 M Street, NW
Washington, DC 20419
Phone: (202) 653-7200 or (800) 209-8960
Internet: <http://www.mspb.gov>

- **Office of Special Counsel (OSC)** - If you think you have been discriminated against based upon sexual orientation or general identity for whistleblowing you may wish to contact OSC at the address below.

Office of the Special Counsel

1730 M Street, NW
Suite 218
Washington, D.C. 20036-4505
Phone: Complaints Examining Unit (202) 254-3670 or (800) 872-9855
Internet: <http://www.osc.gov>

- **Negotiated Grievance Procedure** - You may also wish to contact the union that represents you for information about a negotiated grievance procedure.
- **Administrative Internal Grievance Procedure** - Refer to Administrative Instruction 2-7 or contact the Human Resources Division at the Commission for information to assist you in determining applicability to your situation and the procedures to follow.

Mauro Morales

Mauro Morales
Staff Director

1-27-2021

Date