



Revised DHS Anti-Discrimination Policy Statement

As the Department of Homeland Security protects the United States, one of its guiding principles is mutual respect, allowing each employee to contribute to that crucial mission to his or her full ability. Maintaining a fair workplace and fostering a diverse workforce creates an environment in which personnel can develop and apply the widest possible range of competencies, ideas, and solutions. DHS is fully committed to equal employment opportunity (EEO) principles, and is issuing this Anti-Discrimination Policy to guide the Department's employees in understanding their rights and responsibilities relating to equal employment.

The core of equal employment opportunity is the right to work and advance on the basis of merit, ability, and potential, free from prejudice or discrimination. In accordance with the applicable anti-discrimination statutes, executive orders, and other authorities, DHS protects employees against discrimination, to the fullest extent of law, on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age, disability, genetic information, marital status, political affiliation, whistleblower activity, sexual orientation, parental status, and military service (past, present, or future), and against retaliation for participation in EEO activity or opposition to discrimination.

Unlawful discrimination includes harassment on any of these bases that has the purpose or effect of unreasonably interfering with an individual's work performance or that creates an intimidating, offensive, or hostile environment. It is DHS policy to maintain a work environment in which all DHS employees are free from such harassment, by preventing it through training and supervision, and by promptly taking discipline and corrective action if harassment occurs. Employees should promptly report any incidents of harassment they observe, as well as any suspected retaliation related to a harassment complaint.

Attached to this policy statement is more information relating to anti-discrimination rights, responsibilities, and remedies, along with the ways in which an employee who believes he or she has been subjected to discrimination or retaliation can obtain a prompt and fair hearing and remedy.

All DHS personnel are responsible for complying with this policy, for maintaining a high level of professional conduct in the workplace, and for treating others with respect and fairness. The Department enlists and relies on your support in this crucial aspect of our operations. If you believe you have been subjected to discrimination or retaliation, the Department values the opportunity to correct the problem and improve our organization for you and your coworkers.

PROCESSING COMPLAINTS OF DISCRIMINATION BY LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) FEDERAL EMPLOYEES

Title VII/Section 1614 Claims of Sex Discrimination by LGBT Employees

Claims by transgender individuals. The EEOC's decision in *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012); 2012 WL 1435995 (E.E.O.C.) represents the Commission's position that discrimination against an individual because that person is transgender (also known as gender identity discrimination) is discrimination because of sex.

Complaints of discrimination on the basis of transgender status should be processed under Title VII of the Civil Rights Act of 1964 and through the federal sector EEO complaint process at 29 C.F.R. Part 1614 as claims of sex discrimination.

Claims by lesbian, gay, and bisexual individuals. Lesbian, gay and bisexual individuals may also experience sex discrimination, including sexual harassment or other kinds of sex discrimination. Sex discrimination includes adverse actions taken because of a person's failure to conform to sex-stereotypes. *See, e.g., Rosa v. Department of Veterans Affairs*, EEOC Appeal No. 0120091318 2009 WL 2513955 (E.E.O.C.) August 3, 2009 (harassment against a male employee including repeated innuendos about his sexuality and verbal mocking using "very feminine voices" can constitute discrimination based on sex); *Veretto v. U.S. Postal Service*, EEOC Appeal No. 0120110873 (July 1, 2011); 2011 WL 2663401 (E.E.O.C.) (discrimination based on sex-stereotype that men should only marry women can constitute discrimination based on sex) and *Castello v. U.S. Postal Service*, EEOC Request No. 0520110649 (December 20, 2011); 2011 WL 6960810 (E.E.O.C.) (discrimination based on sex-stereotype that women should only have sexual relationships with men can constitute discrimination based on sex).

In accordance with EEO Pre-Complaint Processing Procedures set forth in MD 110 Chapter 2, EEO Counselors should assist individuals in clearly defining their claims. Lesbian, gay and bisexual employees who believe they have been discriminated against because of their sexual orientation should be counseled that they have a right to file a complaint under the 1614 process, because they may have experienced sex discrimination, as described above.

Appeals to the Commission. If a lesbian, gay, or bisexual employee files a complaint under the 1614 process and the agency rejects the complaint as failing to state a claim of sex discrimination, the agency should ensure that it provides the employee with the appropriate notice of right to appeal as set forth in EEOC's regulations (29 CFR 1614.401) and MD 110.

Other Federal Processes for Addressing LGBT Discrimination

Executive Order 13087. Executive Order 13087 explicitly prohibits discrimination based on sexual orientation. As such, federal agencies should retain procedures that permit employees to file complaints of sexual orientation discrimination under the Executive Order. Where a lesbian, gay, or bisexual employee files a complaint under the 1614 process for sex discrimination, the complaint may be dual filed under both the 1614 and EO processes. Of course, if a complainant wants to file his or her complaint solely under the Executive Order or solely under the 1614 process, the individual is free to do so.

Office of Special Counsel. Employees may also file complaints of sexual orientation and gender identity discrimination with the Office of Special Counsel (OSC), which receives and investigates allegations of prohibited personnel practices under Title V of the Civil Service Act. OSC has taken the position that allegations of discrimination based on sexual orientation and gender identity may constitute prohibited personnel actions and therefore will accept and investigate complaints of sexual orientation and gender identity discrimination filed by federal employees. More information about how to file a prohibited personnel practice complaint with OSC can be found at: <http://www.osc.gov/ppp.htm>.