



## **DOL Policies on LGBTQ+ Employees and Applicants: Rights and Responsibilities Desk Aid**

### **Civil Rights Center, U.S. Department of Labor**

The Department of Labor (DOL) is committed to the fair treatment of, and equal opportunity for, Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ+)<sup>1</sup> individuals. The Department's policies reaffirm DOL's commitment to creating safe spaces for all its workers, regardless of sexual orientation, transgender status, gender identity, and gender expression. The Department's ban on discrimination works to create the reasonable expectation of an environment where all employees and applicants for employment at DOL are evaluated by their performance, rather than by their sexual orientation or gender identity or expression or others' perceptions thereof.

This desk aid addresses certain rights and responsibilities pertaining to LGBTQ+ employees and applicants at DOL. For additional information on discrimination based on transgender status, gender identity, or gender expression, please see the DOL Policies on [Gender Identity: Rights and Responsibilities](#).

Studies have shown that LGBTQ+ people face disproportionate amounts of discrimination. According to a Williams Institute study of public and private sector employees, over 45% of employees (both LGBT and non-LGBT) reported hearing anti-LGBT remarks in the workplace.<sup>2</sup> A 2018 study by the Human Rights Campaign revealed that 46% of LGBTQ workers nationwide do not disclose their sexual orientation at work and 18% reported that a coworker had made inappropriate comments to them because their coworker thought "their sexual orientation or gender identity made it

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<sup>1</sup> The "+" is intended to represent the full spectrum of identities not otherwise represented in the preceding initials.

<sup>2</sup> Brad Sears, Christy Mallory, and Winston Luhur, [Public And Private Sector Employees' Perceptions Of Discrimination Against LGBTQ People](https://williamsinstitute.law.ucla.edu/wp-content/uploads/Employees-Perceptions-Discrimination-Apr-2021.pdf), The Williams Institute, (2021), at 3, *available at* <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Employees-Perceptions-Discrimination-Apr-2021.pdf>.

okay.”<sup>3</sup> In addition, a 2015 study by the National Center for Transgender Equality indicated that 77% of transgender respondents who had a job in the preceding year reported taking steps to avoid mistreatment at work, such as hiding their gender transition at work or quitting their job.<sup>4</sup>

Some DOL employees face ongoing harassment, such as degrading comments and rumors, from coworkers and customers because of their sexual orientation, or because they do not conform to traditional gender stereotypes, and are perceived as insufficiently masculine or feminine. These studies and the experiences of DOL employees underscore the importance of the Department creating a safe environment for all of its employees.

### **Employees’ and Applicants’ Rights**

**Who is protected from discrimination based on sexual orientation, transgender status, gender identity, and gender expression?** DOL policies protect employees and applicants from being harassed, denied employment or promotion, or otherwise subjected to adverse treatment because of their sexual orientation, transgender status, gender identity, and gender expression. Title VII of the Civil Rights Act of 1964 (Title VII) also makes it unlawful for employers to discriminate in the employment of an individual “because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a)(1). In 2020, the Supreme Court ruled in *Bostock v. Clayton County*, 140 S. Ct. 1731, that discrimination based on sexual orientation or gender identity constitutes discrimination “because of . . . sex” in violation of Title VII. In addition, Executive Order 13087 explicitly prohibits discrimination in federal employment based on sexual orientation. And, on January 20, 2021, President Biden reaffirmed and applied these protections by issuing an Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (Executive Order 13988).

Prohibited discrimination can take many forms, including a failure to hire or promote, or termination. Discrimination can also violate the law if an employee or applicant is harassed or subjected to a “hostile work environment.” The Equal Employment Opportunity Commission (EEOC), the agency responsible for enforcing non-discrimination laws applicable to federal employees and applicants, has found the following situations may constitute discriminatory harassment:

- Where a supervisor repeatedly advised a lesbian employee that associating with another lesbian colleague created an “improper perception.”
- Where coworkers made anti-LGBT remarks and used derogatory sex-based epithets and supervisors failed to take appropriate action when informed.<sup>5</sup>

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3 Human Rights Campaign, [A Workplace Divided: Understanding the Climate for LGBTQ Workers Nationwide](https://assets2.hrc.org/files/assets/resources/AWorkplaceDivided-2018.pdf?_ga=2.123330635.1323819556.1616700530-1007446726.1616700530) (2018), at 6, available at [https://assets2.hrc.org/files/assets/resources/AWorkplaceDivided-2018.pdf?\\_ga=2.123330635.1323819556.1616700530-1007446726.1616700530](https://assets2.hrc.org/files/assets/resources/AWorkplaceDivided-2018.pdf?_ga=2.123330635.1323819556.1616700530-1007446726.1616700530).

4 National Center for Transgender Equality, [2015 U.S. Transgender Survey](https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf), (2015), available at <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> at 13.

5 *Couch v. Dep’t of Energy*, EEOC Appeal No. 0120131136, 2013 WL 4499198 (Aug. 13, 2013).

- Where supervisors did nothing in response to an employee's complaint that a coworker had called him "homo" and told him he was "living in sin" and would be "going to hell."<sup>6</sup>
- Where a supervisor intentionally fails to refer to an employee by their new name and/or pronoun(s).<sup>7</sup>

**What are my rights under DOL's nondiscrimination policies?** DOL employees and applicants for employment have the right to a workplace free of discrimination, including harassment. If you believe you are being subjected to harassing conduct, please contact your Agency Workplace Equality Compliance Office (WECO), which processes allegations of harassing conduct in accordance with DOL's policy and procedures and with the goal of stopping the harassing conduct before it becomes severe or pervasive, and a violation of the law. When an individual files a complaint with WECO, their only remedy is cessation of the harassing conduct. If you believe that you have experienced unlawful disparate treatment or a hostile work environment (harassing conduct that is severe or pervasive), you should contact the [Civil Rights Center \(CRC\)](#), which is responsible for ensuring nondiscrimination within the Department and processing discrimination complaints in accordance with the Federal Sector Equal Employment Opportunity (EEO) Complaint Processing Regulations, found at 29 C.F.R. Part 1614. If an individual files a complaint with CRC, and the allegations are found to violate the law, that individual may receive make-whole relief, which may include monetary compensation, as a result of the discriminatory conduct. A complaint filed with your Agency WECO is **not** the same as filing a complaint with CRC. The two processes are distinct and serve different purposes. The mission of your Agency WECO is to serve as an agency-support mechanism, including by advising agency managers on EEO issues and preventing harassing conduct from becoming so severe or pervasive as to violate the law. The mission of CRC is to serve as a neutral agency within the Department and to promote justice and equal opportunity by acting with impartiality and integrity in enforcing various civil rights laws. CRC's Office of Internal Enforcement (OIE) administers the Department's EEO program by counseling, facilitating mediation, investigating, adjudicating, and remedying complaints of alleged discrimination filed by DOL employees and applicants for DOL employment.

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<sup>6</sup> *Complainant v. U.S. Postal Serv.*, EEOC Appeal No. 0120133382 2015 WL 755097 (Feb. 11, 2015).

<sup>7</sup> *Jameson v. U.S. Postal Serv.*, EEOC Appeal No. 0120130992, 2013 WL 2368729 (May 21, 2013).

## **Workplace Equality Compliance Office (WECO)**

### **When to contact**

- Contact if you believe you are being subjected to harassing conduct<sup>8</sup>
- Harassing conduct includes but is not limited to:
  - Initial incidents that are unwelcome and unprofessional and based on a protected category
  - Conduct that may violate the harassing conduct policy, is not necessarily a violation of the law and would rise to the level of a Hostile Work Environment that is severe or pervasive

### **Mission**

- Support agency, including in compliance, settlement/alternative dispute resolution (ADR), and training
- Advise and guide agency managers on EEO issues
- Inquire into allegations of harassing conduct
- Prevent harassing conduct from becoming severe or pervasive

### **Remedy**

- Cessation of harassing conduct
- Temporary interim measures while inquiry into allegations of harassing conduct occur, including, but not limited to:
  - Reassigning or relocating alleged harasser/victim
  - Altering work hours or telework schedules to avoid contact
  - Any interim measures must not unduly burden alleged victim

## **Civil Rights Center (CRC)**

### **When to contact**

- Contact if you believe that you have experienced unlawful disparate treatment or a hostile work environment (within 45 days of the alleged action)
- Unlawful Disparate treatment includes the denial of terms, conditions, and privileges of employment, such as, termination, suspension, denial of leave, poor performance appraisal, nonselection/nonpromotion, or denial of a reasonable accommodation
- “Hostile work environment” means harassing conduct that is severe or pervasive; it can also mean a single egregious incident occurred.
- Severe or pervasive conduct includes but is not limited to:

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<sup>8</sup> There is no prescribed timeframe for raising concerns under this Policy and procedures with the Workplace Equality Compliance Office (WECO), although prompt reporting is strongly encouraged. It is important to understand that it may be more difficult to investigate and address allegations that are aged. However, the Department will review all allegations in an attempt to stop any harassing conduct, which is the only remedy available under this Policy and procedures. Filing a complaint with an EEO Counselor of the Civil Rights Center (CRC), however, must occur within 45 days of the last alleged incident of discrimination. Any incidents that occurred beyond the 45 days would still be considered under a theory of a hostile work environment, but not as an allegation of unlawful disparate treatment if the conduct affects a term, condition, or privilege of employment.

- Egregious and offensive conduct
- Retaliation for opposing discriminatory or harassing conduct
- Single use of a highly charged epithet that dredges up the history of discrimination

## **Mission**

- Maintain neutrality; subject to oversight from the EEOC
- Authorized to order findings of discrimination against the Department, including ordering corrective relief
- Promote justice and equal opportunity
- Administer Department's EEO program

## **Remedy**

- Make-whole relief, including monetary compensatory awards for:
  - Non-pecuniary damages attributed to emotional pain and suffering
  - Pecuniary damages attributed to losses caused by discriminatory conduct
  - Attorney fees
  - Back pay
  - Restoration of leave
  - Front pay
  - Other forms of equitable relief

## Responsibilities of Managers and Supervisors

**Communicate clearly.** Managers should discuss with their employees what type of behavior is lawful, professional, and appropriate in the workplace. Discrimination and harassment based on sexual orientation and gender identity are prohibited, and managers should make clear the consequences their employees will face if they violate the law. If anyone in the workplace is treating customers or coworkers differently because of their sexual orientation, gender identity, or gender expression, they risk discipline up to and including removal. Finally, managers should make sure that LGBTQ+ workers know their rights under nondiscrimination policies.

**Lead by example.** The most effective way for a manager to set the tone in the workplace is to model respect. If an employee or customer decides to be open about their sexual orientation or gender identity at work, there are many ways in which managers' words and actions can help build a welcoming and safe atmosphere. Some specific examples:

- **Inclusive Language:** Whenever possible, use gender-neutral language to avoid assumptions about employees' sexual orientation or gender identity. For instance, use words like "spouse" instead of gender-specific terms like "husband" or "wife," or the singular third-person pronoun "they" instead of "he or she" when referencing a hypothetical or anonymous person, or when you don't know the individual person's pronouns. In addition, be mindful in referring to individuals' identity, gender, partners, and relationships. Someone's sexual orientation or gender identity is one aspect of their identity, but not what may fully define them.
- **Acknowledge and Engage:** It is up to the individual if they want to share information about their personal life experiences with their coworkers. If an LGBTQ+ employee has disclosed their sexual orientation or gender identity at work, treat them as you would a non-LGBTQ+ employee, such as asking about their partner and acknowledge wedding anniversaries or other important events. Do not gossip or spread rumors about LGBTQ+ employees, and do not condone others doing so, either.

**Train employees.** Managers should offer resources for employees to educate themselves about treating all of their colleagues, customers, and others with dignity and respect. Trainings enable employees to ask questions in a moderated space and are an effective way of preventing discrimination. Trainings should inform employees that it is their responsibility to report acts of homophobia and to challenge derogatory language, jokes, and behavior.

For more guidance on LGBTQ+ rights and policies in the federal workplace see, [Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment: A Guide to Employment Rights, Protections, and Responsibilities](#), developed by the Office of Personnel Management, the EEOC, the Office of Special Counsel, and the Merit Systems Protection Board.

For more information, please contact CRC at (202) 693-6500 (voice) or (800) 877-8339 (Relay), Room N-4123 (Frances Perkins Building), or by e-mail at [CivilRightsCenter@dol.gov](mailto:CivilRightsCenter@dol.gov).

## Gender Identity: Key Terminology<sup>9</sup>

**What is the difference between sex and gender?** Sex (*i.e.*, male, female, or intersex) is assigned at birth based on a combination of a baby's biological characteristics, including chromosomes, hormones, and reproductive organs, and is originally documented on a person's birth certificate. The [World Health Organization](#) defines *gender* as the "socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate" based on sex.

**Agender:** An identity under the nonbinary and transgender umbrellas. Some agender individuals have no gender identity, although some define agender as having a gender identity that is neutral.

**Bigender:** An identity under the nonbinary and transgender umbrellas. Bigender individuals identify with more than one gender.

**Cisgender:** A person whose gender identity matches with the sex they were assigned at birth.

**Gender expression:** How a person represents or expresses one's gender identity to others, often through behavior, clothing, hairstyles, voice, or body characteristics. All people have a gender expression.

**Genderfluid:** Refers to an identity under the nonbinary and transgender umbrellas. Genderfluid individuals have different gender identities at different times. A genderfluid individual's gender identity could be multiple genders at once, and then switch to none at all, or move between single gender identities. For some genderfluid people, these changes happen as often as several times a day, and for others, monthly, or less often.

**Gender identity:** A person's internal sense of being male, female, or something else such as agender, binary, gender fluid, gender nonconforming, genderqueer, or nonbinary. Since gender identity is internal, one's gender identity is not necessarily visible to others. All people have a gender identity.

**Gender nonconforming (GNC) or Genderqueer:** Terms for people whose gender identity and/or expression is different from societal expectations related to gender.

**Gender-affirming care:** An inclusive term for treatments and procedures that help an individual align their physical and/or other characteristics with their gender identity, often called transition-related care.

**Intersex:** Refers to a person who is born with sexual or reproductive anatomy that does not fit within the sex binary of male or female, encompassing a variety of sex expressions.

**LGBT or LGBTQ:** Shorthand for lesbian, gay, bisexual, transgender, and queer people.

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<sup>9</sup> National LGBTQ Task Force, LGBTQ+ [Glossary of Terms](#), available at <https://www.thetaskforce.org/wp-content/uploads/2019/06/Task-Force-LGBTQ-RJ-Glossary-of-Terms.pdf> (last visited April 16, 2021).



**Nonbinary:** A term used by people who identify as neither entirely male nor entirely female. This can include people who are agender, bigender, genderfluid, gender nonconforming, and genderqueer, among others. Some nonbinary people identify as transgender, while others do not.

**Pronouns:** Terms used to substitute a person's name when they are being referred to in the third-person. Some common pronouns include he/him/his, she/her/hers, and they/them/their(s). A person's gender should not be assumed based on their pronouns.

**Queer:** An umbrella term which embraces a variety of sexual preferences, orientations, and habits of those who are not among the exclusively heterosexual and monogamous majority. Although the term was once considered derogatory and offensive, the community has reclaimed the word and now uses it widely as a form of empowerment. Younger generations tend to use the term "queer" for reasons such as the fact that it does not assume the gender of the queer person or the gender of any potential romantic partners, and/or in order to make a political statement about the fluidity of gender.

**Sexual Orientation:** A person's identity in relation to whom they are attracted to. All people have a sexual orientation. Sexual orientation, gender identity, and gender expression are distinct components of a person's identity. Sexual orientation should not be confused with a person's gender identity or gender expression.

**Transgender:** A broad term for people whose gender identity or expression is different from those typically associated with their sex assigned at birth. "Trans" is shorthand for "transgender." Note: Transgender is correctly used as an adjective, for example: "transgender people," "people who are transgender," "a woman who is transgender," etc. However, "transgenders" or "transgendered" are incorrect and disrespectful.

**Transition:** A broad term commonly used to refer to the ongoing process by which a person alters components of their gender expression and/or other personal characteristics to better align with their gender identity. A person's transition may or may not include a combination of social changes (e.g., name, pronouns, appearance and/or clothing), legal changes (e.g., legal name and/or legal gender markers), and medical changes (e.g., gender-affirming hormone therapy and/or surgeries). Note: Not all transgender and/or non-binary people want to transition or are able to access the resources necessary to do so. However, regardless of whether, how, or when a person takes any, some, or all of these actions, their gender identity is valid and should be respected and affirmed.

**Transphobia:** The hatred or fear of transgender, nonbinary, and gender nonconforming people. This sometimes leads to acts of violence and expressions of hostility. Transphobia is not confined to any one segment of society and can be found in people from all walks of life.

**Two-Spirit:** Contemporary umbrella term that refers to the historical and current First Nations people whose individual spirits were a blend of female and male spirits. This term has been reclaimed by Native American LGBTQ+ communities in order to honor their heritage and provide an alternative to the Western labels of gay, lesbian, or transgender.