



Facts about Discrimination in Federal Government Employment Based on Marital Status, Political Affiliation, Status as a Parent, Sexual Orientation, and Gender Identity

Laws Enforced By the EEOC

The EEOC enforces the prohibitions against employment discrimination in Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Sections 501 and 505 of the Rehabilitation Act of 1973, Titles I and V of the Americans with Disabilities Act of 1990 (ADA), Title II of the Genetic Information Non-discrimination Act (GINA), and the Civil Rights Act of 1991. These laws prohibit discrimination based on race, color, sex, religion, national origin, age, disability, and genetic information, as well as reprisal for protected activity. The Commission's interpretations of these statutes apply to its adjudication and enforcement in federal sector as well as private sector and state and local government employment.

The EEOC has held that discrimination against an individual because that person is transgender (also known as gender identity discrimination) is discrimination because of sex and therefore is covered under Title VII of the Civil Rights Act of 1964. See *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012), <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>. The Commission 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), <http://www.eeoc.gov/decisions/0120133080.pdf>.

While discrimination based on an individual's status as a parent (prohibited under Executive Order 13152) is not a covered basis under the laws enforced by the EEOC, there are circumstances where discrimination against caregivers may give rise to sex discrimination under Title VII or disability discrimination under the ADA. See *Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*, www.eeoc.gov/policy/docs/caregiving.html.

Federal government employees may file claims of discrimination under the Part 1614 EEO process on any of the bases covered under the laws EEOC enforces, and/or may also utilize additional complaint procedures described below.

Civil Service Reform Act

The Civil Service Reform Act of 1978 (CSRA), as amended, also protects federal government applicants and employees from discrimination in personnel actions (see "Prohibited Personnel Practices" <http://www.opm.gov/ovrsight/proidx.asp>) based on race, color, sex, religion, national origin, age, disability, marital status, political affiliation, or on conduct which does not adversely affect the performance of the applicant or employee -- which can include sexual orientation or gender identity. The Office of Special Counsel (OSC), www.osc.gov, and the Merit Systems Protection Board (MSPB), www.mspb.gov, enforce the prohibitions against federal employment discrimination codified in the CSRA. For more information, see OPM's *Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment* at <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/addressing-sexual-orientation-and-gender-identity-discrimination-in-federal-civilian-employment.pdf>, OPM's *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace* at www.opm.gov/diversity/Transgender/Guidance.asp, and OSC's *Prohibited Personnel Practices and How to File a Complaint* at <https://osc.gov/Pages/PPP.aspx>

Executive Orders

Additionally, federal agencies retain procedures for making complaints of discrimination on any bases prohibited by Executive Orders. For example, [Executive Order 11478](#), section 1 (as amended by Executive Orders 13087 and 13152) 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.

Federal agencies may retain procedures that permit employees to file complaints of sexual orientation discrimination under Executive Order 13087. However, federal agencies should ordinarily process a **complaint of discrimination on the basis of sexual orientation as claims of sex discrimination 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, unless the complainant specifically requests to use a different complaint process, after being advised by the agency that sexual orientation discrimination claims are ordinarily processed under section 1614.** Where an employee files a complaint under the EEOC's 1614 process for discrimination on the basis of sexual orientation (as a form of sex discrimination), the employee may elect to dual-file the complaint under both the 1614 and Executive Order processes. Of course, if a complainant wants to file the complaint solely under the Executive Order or solely under the 1614 process, the individual is free to do so.

Executive Order 13152 states that "status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: a biological parent, an adoptive parent, a foster parent, a stepparent, a custodian of a legal ward, in loco parentis over such individual, or actively seeking legal custody or adoption of such an individual. The Executive Order authorized OPM to develop guidance on the provisions of the Order.