



U.S. Equal Employment Opportunity Commission

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## 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, 2012 WL 1435995 (E.E.O.C.) (April 20, 2012), 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. See also *Jameson v. U.S. Postal Service*, EEOC Appeal No. 0120130992, 2013 WL 2368729 (E.E.O.C.) (May 20, 2013) (intentional and repeated misuse of a transgender employee's name and pronoun are severe or pervasive enough to constitute a claim of a sex based hostile work environment); *Complainant v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120133123, 2014 WL 1653484 (E.E.O.C.) (Apr. 16, 2014) (The Agency's refusal to change a transgender employee's records to reflect his new name and gender for over a year, coupled with an Information Security Officer's hostility towards him because of the change in his gender identity from female to male, was severe or pervasive enough to constitute a claim of sex based harassment).

**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.** The EEOC's decision in *Baldwin v. Dep't of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015) holds that discrimination on the basis of a person's sexual orientation is discrimination because of sex. See also, *Brooker v. U.S. Postal Service*, EEOC Request No. 0520110680, 2013 WL 4041270 (E.E.O.C.) (May 20, 2013) (an ongoing pattern of comments and rumors referring to a complainant as being gay can be severe or pervasive enough to rise to the level of sexual harassment); *Couch v. Dep't of Energy*, EEOC Appeal No. 0120131136, 2013 WL 4499198 (E.E.O.C.) (Aug. 13, 2013) (allegation of harassment on the bases of "perceived sexual orientation" and reprisal resulted in a finding of sex and reprisal based harassment; the Commission noted that the words "fag" and "faggot" have been historically used in the United States as highly offensive, insulting, and degrading sex-based epithets against gay men and men who are perceived as insufficiently masculine).

**Complaints of discrimination on the basis of sexual orientation 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, 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.**

### Other Federal Processes for Addressing LGBT Discrimination

**Executive Order 13087.** Executive Order 13087 explicitly prohibits discrimination based on sexual orientation. As such, federal agencies may retain procedures that permit employees to file complaints of sexual orientation discrimination under the Executive Order. Where an employee files a complaint under the 1614 process for discrimination on the basis of sexual orientation (as a form of 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>.