

## LGBT Issues in the Workplace

March 10, 2016

U.S. Department of Transportation  
2016 Civil Rights Symposium

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## Contents

Legal Landscape  
LGBT Issues in the Workplace  
Best Practices for Equality  
Questions and Answers

## Federal Employment Law

### Title VII of the Civil Rights Act Of 1964

- Race
- Color
- National Origin
- Religion
- **Sex**
- Retaliation

## Sex Includes Sex-Stereotyping/Gender

- The Supreme Court recognized that Title VII's prohibition of discrimination on the basis of sex includes discrimination on the basis of "gender"
- This includes discrimination because an individual fails to conform to gender-based expectations, stereotypical or otherwise (Price Waterhouse v Hopkins)

## Discrimination Based on Transgender Status/Gender Identity

EEOC has found that discrimination against someone because they are transgender is discrimination "based on sex" and is prohibited under Title VII. Macy v. Dep't of Justice, EEOC Appeal No. 0120120821 (Apr. 20, 2012)

## Discrimination Based on Sexual Orientation

EEOC has also found that sexual orientation discrimination is sex discrimination. Baldwin v. Department of Transportation (Federal Aviation Administration), EEOC Appeal No. 0120133080 (July 15, 2015).

Macy and Baldwin offer several ways to think about gender identity and sexual orientation discrimination as sex discrimination:

- Inherent sex based considerations
- Sex stereotyping
- Associational discrimination

Provisions Specific to  
Federal Employees

Executive Order 13087

## OPM Transgender Guidance

- In 2011, OPM issued its “Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace” (U.S. Office of Personnel Management, May 27, 2011).
- Also in 2011, OPM issued instructions titled, “How to Reconstruct a Personnel Folder due to a Change in Gender Identity,” (U.S. Office of Personnel Management, June 1, 2011).

## OPM: Health Benefits

- In 2014, OPM issued instructions to health insurance carriers that made clear that they may offer coverage for Transgender-related care (U.S. Office of Personnel Management, June 13, 2014).
- In 2015, OPM issued an FEHB carrier letter stating that effective January 1, 2016, no participating carrier may have a general exclusion for such care.(U.S. OPM, June 23, 2015)

Federal Contractors  
Executive Order 11246

State Laws and Local Ordinances

## Workplace Discrimination Based on Sexual Orientation and Gender Identity

### Lesbian, Gay and Bisexual Persons Report High Levels of Workplace Discrimination

63% Report workplace discrimination based on  
sexual orientation

58% Report anti-gay jokes/comments

67% Report that they don't complain



## Transgender Persons Report Even Higher Levels of Workplace Discrimination

97% Report workplace discrimination or harassment based on gender identity

67% Report being fired, not hired, or not promoted because of gender identity

In its private sector enforcement program alone, EEOC received over 3,300 charges of sexual orientation and/or gender identity discrimination from FY 2013-2015, and recovered over \$6.5 million in monetary relief for LGBT discrimination

## Sexual Orientation Discrimination: Most Common Issues/Fact Patterns

Discharge  
Harassment  
Terms and Conditions

### Sexual Orientation Discrimination: Discharge

Discriminatory discipline leading to discharge  
Discharge explicitly because of sexual  
orientation

## Sexual Orientation Discrimination: Harassment

Anti-gay epithets

Religious-based harassment

Sex-stereotyping

Sex-based harassment

## Sexual Orientation Discrimination: Terms and Conditions

Double standards regarding employee conduct for lesbian, gay, and bisexual employees versus straight employees.

## Gender Identity Discrimination: Most Common Issues/Fact Patterns

Discharge

Harassment

Terms and Conditions

Hiring

## Gender Identity Discrimination: Discharge

Can be subtle/camouflaged as performance  
or disciplinary problems

Often overt

Customer preference sometimes asserted

## Gender Identity Discrimination: Harassment

Pronouns/Names

Inappropriate requests for medical info

Sex- and sex-stereotype-based harassment

Dress-code related harassment

Religious-based harassment

## Gender Identity Discrimination: Terms and Conditions

Restrooms/locker rooms

Benefits

Dress codes

## Gender Identity Discrimination: Hiring

Good enough as a man/not so good when a transwoman (Schroer and Macy fact pattern)

Early exclusion in hiring based on transgender status

Best Practices for Ensuring  
Compliance with the Law and  
Equality in the Workplace

## Most Important Rule: The **Golden** Rule

### Terminology

- Sexual orientation: a person's sexual identity in relation to the gender they are attracted to
- Gay: a person who is attracted to people of the same gender
- Lesbian: a woman who is attracted to another woman
- Bisexual: a person who is attracted to either gender
- Heterosexual or straight: a person who is attracted to people of the opposite gender

## Respectful Terms

Gay People

Gay Men

Gay Women

Lesbian or Lesbians

Bisexual

Asexual

Sexual Orientation

LGBT or GLBT

A portion of this list is from *Out & Equal*, 2012

## Terminology



Transgender Woman

Transgender Man

Cisgender

Gender non-binary

Genderqueer

Agender

Gender identity

Gender expression



## Respectful Terms

Transgender Woman

Transwoman

Transgender Man Transman

Men and Women – no modifier needed!

Gender Transition

Gender Identity, Gender Expression

Transgender People

LGBT or GLBT

A portion of this list is from *Out & Equal*, 2012

## Respectful Communications

- Do not make assumptions that all employees and coworkers are heterosexual/straight or identify with the gender they were born with
- An LGBT employee may overhear your conversation or receive one of your emails – be inclusive and respectful in everything you say
- Use inclusive language in policies and activities involving employee relationships and family

## Do Not Tolerate Discriminatory Comments or Jokes

- Communicate a zero-tolerance policy for discrimination
- Speak up if you hear a discriminatory comment, name, or joke about LGBT people
- Don't engage in gossip or allow others to gossip about an employee's sexual orientation or gender identity
- Know that LGBT employees CAN file EEO complaints of discrimination

## Planning for A Successful Gender Transition: Workplace Considerations

- Respect
- Privacy
- Planning
- Flexibility
- Cooperation

## Understanding the Transition Process

- Some transgender individuals will find it necessary to transition from living and working as one gender to another
- These individuals may seek some form of medical treatment, however some individuals, will not pursue some (or any) forms of medical treatment
- The transition process is different for every individual
- No medical treatment is necessarily required for an individual to be considered “transitioned” to the gender with which they identify

## Encourage your Agency to Be Proactive

- Encourage your Agency to implement a transgender transition policy
- Encourage your Agency to conduct LGBT cultural competency training
- Managers should offer encouragement and support for LGBT Special Emphasis Programs in the workplace

## What Happens in a LGBT Inclusive Work Environment?

- Larger pool of employees
- Increased retention of valuable employees
- LGBT employees are more engaged in work and with coworkers – fear of discrimination inhibits and distracts employee
- All employees perform better in a workplace free from unlawful discrimination

Questions?

For More Information:

EEOC Website

[www.eeoc.gov](http://www.eeoc.gov)