

CIVIL RIGHTS DIVISION



Equal Employment Opportunity, Anti-Harassment & Whistleblower Protection Policy

I. Equal Employment Opportunity

Consistent with its mission of enforcing the nation's civil rights laws, the Civil Rights Division (Division) is an equal opportunity employer and is fully committed to providing equal opportunity to all employees and applicants. All programs to recruit, hire, train, develop, promote, reward, and discipline employees will be conducted in a fair and consistent manner, and solely on the basis of merit. To that end, consistent with federal statutes, including Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act, Executive Orders and Department of Justice (Department) policies, it is the policy of the Division to prohibit discrimination against or harassment of employees and applicants for employment based on race, color, religion, national origin, age, sex (including pregnancy and gender identity), sexual orientation, disability (physical or mental), status as a parent, marital status, political affiliation genetic information, membership or non-membership in an employee organization, military service, personal favoritism, or other non-merit factors. Such factors may not be considered, except as permitted by law, in taking, recommending or approving any personnel decisions, including hiring, staffing, assignments, reassignments, details, promotions, awards and adverse actions.

In addition to federal anti-discrimination laws, Division employees must adhere to the requirements of the Civil Service Reform Act, 5 U.S.C. §§ 2301-2302, which includes among the prohibited personnel practices discrimination on a number of bases in taking, recommending or approving personnel actions, including but not limited to hiring decisions, appointments, promotions, reassignments, details, pay, awards and adverse actions. Those prohibited practices include, but are not limited to, the following: Division employees authorized to take, direct others to take, recommend or approve any personnel action shall not:

- discriminate *for or against* an employee or applicant based on race, color, religion, sex, national origin, age, disability, marital status, or political affiliation;
- solicit or consider oral or written employment recommendations unless such recommendations are based on personal knowledge or records of job-related abilities or characteristics;
- coerce the political activity of any person or take any action against any employee or applicant as a reprisal for his or her refusal to engage in such political activity;
- deceive or willfully obstruct anyone's right to compete for employment;

- influence anyone to withdraw from competition for any position for the purpose of improving or injuring the employment prospects of any other person;
- grant an unauthorized preference or advantage not authorized by law, rule or regulation to any employee or applicant for employment for the purpose of improving or injuring the employment prospects of any particular employee or applicant;
- engage in nepotism by hiring, promoting, or advocating for the hiring or promotion of relatives for any position within the Department of Justice;
- engage in reprisal for whistle blowing by taking, failing to take, or threatening to take or fail to take a personnel action with respect to any employee or applicant because of:
 - any disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation, or ; gross mismanagement,; gross waste of funds,; an abuse of authority,; or a substantial and specific danger to public health or safety (if such disclosure is not specifically prohibited barred by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
 - any disclosure to the Special Counsel¹, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee or applicant reasonably believes evidences any violation of any law, rule, or regulation; or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Office of Special Counsel or to the Inspector General; or refusing to obey an order that would require the individual to violate a law;
- discriminate for or against any employee or applicant based on conduct (other than criminal convictions) which does not adversely affect the performance of the employee, applicant, or others;
- knowingly take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement; and

¹ Note that the Office of Special Counsel referenced herein is an independent federal agency, and not the Civil Rights Division's Office of Special Counsel for Immigration Related Unfair Employment Practices.

- take or fail to take any other personnel action, if taking or failing to take action violates any law, rule or regulation implementing or directly concerning merit system principles contained in 5 U.S.C. § 2301.

5 U.S.C. § 2302; *see also* the Department's Equal Employment Opportunity (EEO) Office's web page at <http://www.justice.gov/jmd/eeos> and the [No Fear Act Notice](#).

Division employees are also prohibited from engaging in retaliation against employees or applicants for exercising their rights under federal antidiscrimination or whistleblower protection laws, including opposing any practice made unlawful by such laws or that violates Division or Department EEO policies, or participating in any stage of administrative or judicial proceedings related to such claims either as a complainant or in some other capacity. Prohibited retaliation includes taking actions that would discourage a reasonable employee from initiating an EEO complaint or participating in the EEO complaint process.

All Division employees are responsible for maintaining a workplace based on equal employment opportunity and, to that end, are charged with treating others with respect, fairness and professionalism at all times. In addition, all Division employees are required to take annual EEO training; and all Division employees involved in the hiring process are required to attend training addressing hiring processes, merit system principles and prohibited personnel practices offered by the Division's Professional Development Office (PDO). At the completion of such training, each employee must submit a signed certification of their attendance to the PDO; all certification forms will be maintained by the Division's Human Resources Officer.

II. EEO & Prohibited Personnel Practices Complaint Processes

Employees and applicants may raise complaints outside of the Division by contacting the Department's EEO Office (202-616-4800), the OSC (800-872-9885 (toll free) or 202-653-7188), the Merit Systems Protection Board (MSPB) (202-653-7200 or 800-209-8960), or one of the other federal offices charged with receiving and/or investigating complaints. More information about some of these offices is set forth below.

The Department's EEO Office is a neutral office within the Department with EEO counselors available to discuss complaints and the complaint processes with employees and applicants. The EEO Office accepts formal complaints of discrimination, oversees the investigation of such complaints, and assists in facilitating resolution of complaints through mediation. For most types of EEO complaints, employees and applicants must initiate the Department's EEO complaint process **within 45 calendar days** of the alleged discriminatory action. Additional information about the Department's EEO complaint process, which may vary for different types of complaints, is available at <http://www.justice.gov/jmd/eeos/complaints.htm> (for general complaint process information), <http://www.justice.gov/jmd/eeos/complaints.htm> (for complaints related to discrimination based on sexual orientation) and 29 C.F.R. § 1614.

The OSC, an independent investigative and prosecutorial agency within the Executive Branch, has authority to receive and investigate complaints alleging prohibited personnel practices, including whistleblower retaliation complaints and complaints alleging discrimination based on

membership in various protected categories. OSC is statutorily authorized to investigate allegations of discrimination based on race, color, religion, sex (including gender identity), national origin, age, and disability. However, where agencies have established complaint procedures, as the Department has for most types of EEO-related complaints, OSC will ordinarily avoid duplicating those procedures and will defer to those procedures rather than initiating an independent investigation. *See* 5 C.F.R. § 1810.1. OSC may investigate allegations of discrimination based on marital status and political affiliation, which are not within the jurisdiction of the EEOC and may be prohibited personnel practices or other violations of law. Additional information about the OSC and the types of actions within the OSC's jurisdiction is available at <http://www.osc.gov/ppp.htm>.

Alternatively, employees and applicants may challenge certain types of personnel actions (such as removals, demotions, and suspensions for more than 14 days) they believe were taken based on discrimination or in violation of merit system principles by filing an appeal with the MSPB. Additional information about the MSPB process and the types of actions within the MSPB's jurisdiction is available at www.mspb.gov.

Complaints about waste, fraud, abuse or misconduct, or about retaliation for reporting waste, fraud, abuse or misconduct, may also be within the jurisdiction of the Department's Office of Inspector General (OIG). Additional information about the OIG and the types of claims within the OIG's jurisdiction is available at <http://www.justice.gov/oig/> or by calling the OIG's hotline at (800) 869-4499.

For complaints related to discrimination or retaliation based on military service, or failure to re-employ following military service, employees and applicants may contact the Department of Labor, Veterans' Employment and Training Service (VETS), which is authorized to investigate and resolve complaints against federal executive agencies such as the Department of Justice. For additional information about the Uniformed Service Employment and Reemployment Rights Act (USERRA), contact VETS at 1-866-4-USA-DOL or <http://www.dol.gov/vets>. If VETS is unable to resolve a complaint, the employee or applicant may request that the case be referred to the OSC for possible representation. If the OSC is reasonably satisfied that USERRA has been violated, the OSC may initiate an action before the Merit Systems Protection Board. The employee or applicant may also bypass the VETS / OSC process and submit a complaint directly to the MSPB. *See* www.mspb.gov.

The complaint procedures and deadlines may vary for different types of complaints and through different complaint procedures, and where several complaint options are available, employees and applicants may have to choose one option to the exclusion of others. *See, e.g.*, 29 C.F.R. § 1614.301-302. Moreover, raising a complaint internally within the Division does not toll the deadlines for pursuing that complaint through other complaint processes, including the complaint process described above through the Department's EEO Office. Employees and applicants are encouraged to review the information set forth at the links identified herein or contact the Department's EEO Office for further guidance.

Division employees are encouraged to raise complaints about discrimination, prohibited personnel practices and/or retaliation with their supervisor and/or a higher-level manager in their

Sections in the first instance. Employees or applicants for employment may also raise complaints internally within the Division by contacting the Division's Human Resources Officer (currently Linda Gaither at 202-514-4224). Alternatively, employees covered by the collective bargaining agreement may raise complaints through the negotiated grievance procedure. *See* 29 C.F.R. § 1614.301. The Division supports informal mediation and alternative dispute resolution and will work with employees or applicants, where appropriate, to resolve complaints informally. Raising a complaint internally within the Division does not toll or otherwise impact the time frames and deadlines for initiating the formal complaint and/or grievance processes, including the 45-day deadline for initiating the EEO complaint process through the Department's EEO Office.

Division supervisors and managers who witness, receive a complaint about or otherwise become aware of discrimination (including harassment) or retaliation must promptly report it to the Human Resources Officer (currently Linda Gaither at 202-514-4224) or the Division's Employment Counsel (currently Diana Embrey at 202-353-2510). Division Employment Counsel represents the Division in connection with employment-related complaints, including in efforts to resolve complaints informally through mediation, and, in some cases, conducts internal investigations of complaints on behalf of the Division

III. Diversity

The Division is comprised of a staff of talented and diverse attorneys and professional staff working hard to help the Division further its mission of enforcing the nation's civil rights laws. The Division is stronger, more credible, and more effective in its civil rights enforcement work on behalf of individuals and communities throughout the country when its workforce includes highly qualified employees with backgrounds, cultures and traditions that reflect our Nation's rich diversity.

The Division is committed to being a model employer and a leader in promoting and ensuring equal opportunity. The Division is further committed to fostering an inclusive and diverse work environment, and attracting and retaining a workforce that represents the range of personal and professional backgrounds, experiences and perspectives that arise from differences of culture and circumstances.

The Division is committed to implementing and adhering to employment policies and practices that are fair and transparent, and ensuring that all employees have an opportunity to flourish professionally and succeed in the Division without regard to race, color, religion, national origin, age, sex, sexual orientation, disability, status as a parent, marital status, political affiliation, genetic information, membership or non-membership in an employee organization, military service, personal favoritism or other non-merit factors.

The Division does not, however, have an affirmative action plan and, consistent with EEO and merit system principle policies and laws, personnel decisions may not be based on race, national origin or any other protected status except in very limited circumstances involving special hiring authorities and/or preferences for veterans or applicants with certain targeted disabilities.

IV. Harassment

Federal antidiscrimination laws and Department policies also prohibit harassment in the workplace. To that end, it is the policy of the Division that harassment on the basis of race, color, religion, national origin, age, sex, sexual orientation, disability, actual or perceived political affiliation, or any other protected status is prohibited and will not be tolerated.

Prohibited harassment is unwelcome conduct toward an individual because of his or her protected status, where the conduct results in concrete job harm or is sufficiently severe or pervasive to create an intimidating, hostile or offensive work environment. One form of prohibited harassment is sexual harassment, which includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature where the employee's submission to or rejection of the conduct results in a tangible employment action (such as a promotion or demotion), or where the conduct is sufficiently severe or pervasive to create a hostile work environment.

The Division's prohibition against harassment is broader than federal antidiscrimination laws and, as such, harassment may violate Division policy even where it does not rise to the level of unlawful harassment in violation of federal law. Examples of harassment that may violate the law and will violate this policy include:

- Verbal or written communications, including in e-mails, texts, blog comments, and other publicly available internet venues, that contain offensive name-calling, jokes, slurs, negative stereotyping, threats, or derogatory comments that are targeted toward individuals or groups based on their protected status.
- Nonverbal conduct, such as staring, leering or giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Pressure for sexual conduct or unwelcome dates.
- Displaying visual images, such as derogatory or offensive pictures, cartoons or drawings in hard copy or electronic form.

All Division employees are responsible for maintaining a workplace free of harassment and, to that end, are charged with treating others with respect, fairness and professionalism at all times, and with reporting harassment promptly. All employees must conduct themselves in a professional manner and refrain from engaging in conduct that is hostile or offensive in the workplace, disrupts the workplace or affects the efficiency of the federal service.

Employees or applicants who believe they have been the victim of prohibited harassment should report the harassment promptly internally within the Division to their supervisor, a higher-level manager, or the Division's Human Resources Officer (currently Linda Gaither at 202-514-4224). Employees or applicants may also report the harassment outside of the Division to the Department's EEO Office at 202-616-4800 or one of the other investigative offices discussed in

Part II, above, depending on the nature of the harassment. For most types of EEO complaints, employees and applicants must initiate the Department's EEO complaint process **within 45 calendar days** of the alleged harassment. Employees or applicants should report harassment pursuant to the above described complaint processes, regardless of whether the harassing behavior is directed at the employee or applicant or at someone else in the office.

Division supervisors and managers who witness, receive a complaint about or otherwise become aware of harassment must promptly report it to the Human Resources Officer (currently Linda Gaither at 202-514-4224) or the Division's Employment Counsel (currently Diana Embrey at 202-353-2510).

Complaints of harassment will be taken seriously and, where appropriate, investigated promptly to determine if harassing or inappropriate conduct is occurring and, if so, to take and/or recommend prompt remedial steps to stop it. Complaints and investigations will be kept as confidential as possible. Where harassing or inappropriate conduct has occurred, appropriate corrective action will be taken, which may include termination of employment or lesser disciplinary action against the harasser(s) depending on the severity of the conduct.

Retaliation against any employee or applicant for reporting harassment is strictly prohibited.

V. Reasonable Accommodations

Consistent with sections 501 and 508 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 791, 794, the Division provides equal employment opportunities to individuals with disabilities, including providing reasonable accommodations to employees and applicants with disabilities and equal access to technology and information. The Division has separate policies posted on its website addressing reasonable accommodations and section 508 compliance. *See* http://www.justice.gov/crt/legalinfo/ra_policy_june2010.pdf; Division's 508 portal for Division employees on the intranet; and <http://www.justice.gov/crt/508/index.php>. For additional information about section 508 matters, *see* www.Section508.gov. Employees or applicants with disabilities who need reasonable accommodations should contact the Division's Reasonable Accommodation Coordinator: Susan Crawford at (202) 307-1378.

Complaints about accommodations may be raised outside the Division with the Department's EEO Office, as described above, or internally within the Division with the employee's supervisor and/or manager, through the process set forth in the Division's Reasonable Accommodation Policy, or with the Division's Human Resources Officer (currently Linda Gaither at 202-514-4224).

VI. Religious Accommodations

Consistent with Title VII, 42 U.S.C. §§2000e-2, 2000e(j), the Division provides reasonable accommodations for employees' or applicants' sincerely held religious beliefs or practices where such beliefs or practices conflict with employment requirements, unless doing so would cause an undue hardship. Reasonable accommodations are determined on an individualized basis. Among the factors included in the individualized assessment of such requests are: the nature of

the accommodation requested; the duration of the request; alternative accommodations; financial impact; impact on the operation of the Office or Section; ability of the individual to perform the essential functions of the position if the accommodation is granted; and any other related factors.

Any request by employees for a religious accommodation, other than leave for a religious holiday, should be made by filling out the religious accommodation request form located on the Division's intranet. The form should be submitted to the employee's Office head or Section Chief or designated official, within a reasonable time period before the need for the accommodation. The religious accommodation form is not necessary for requests for religious holiday observance; such requests should be submitted by completing OPM Form 71, Request for Leave or Approved Absence, and will be treated in accordance with Chapter 13, DOJ 1630.1B, Leave Administration Policy, which allows employees time off for religious observance, and to work compensatory overtime to offset the requested time off. Premium pay provisions are not triggered in this situation. See <http://www.justice.gov/jmd/ps/gui16301b.htm>.

Complaints about religious accommodations may be raised outside the Division with the Department's EEO Office, as described above, or internally within the Division with the employee's supervisor and/or manager or the Division's Human Resources Officer (currently Linda Gaither at 202-514-4224).

VII. Additional Resources

- DOJ EEO Policy: <http://www.justice.gov/jmd/eeos/policy.htm>
- DOJ EEO Order: <http://www.justice.gov/jmd/ps/chpt4-1.html>
- Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.
- Civil Service Reform Act, 5 U.S.C. §§ 2301, 2302(b)
- Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq.
- Whistleblower Protection Enhancement Act of 2012, Pub.L. No. 112–199, § 101(b)(2)(C), 126 Stat. 1465, 1465–66
- DOJ Regulations, 28 C.F.R. § 42.1(a)
- DOJ HR Order 1200.1
- Executive Order 13087 (1998), reaffirming the Executive Branch policy prohibiting discrimination based upon sexual orientation within federal civilian employment
- Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq.
- Genetic Information Non-discrimination Act of 2008 (GINA), 42 U.S.C. § 2000ff et seq., and Executive Order 13145, 65 FR 6877 (February 10, 2000)

- Equal Pay Act, 29 U.S.C. 206(d)
- Uniformed Service Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301 et seq.
- Federal Sector EEO Regulations, 29 C.F.R. § 1614
- EEOC Information for Federal Employees and Applicants, http://www.eeoc.gov/federal/fed_employees/index.cfm
- Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (“No Fear Act”), Public Law 107-174, May 15, 2002
- OPM Guidance “Addressing Sexual Orientation Discrimination in Federal Civilian Employment,” <http://www.opm.gov/er/address2/guide01.asp>
- OPM “Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace,” <http://www.opm.gov/diversity/Transgender/Guidance.asp>
- Equal Employment Opportunity Commission: “Facts About Discrimination Based on Sexual Orientation, Status as a Parent, Marital Status and Political Affiliation,” http://www.eeoc.gov/facts/fs-orientation_parent_marital_political.html
- Executive Order 13152 (May 2, 2000), which amended Executive Order 11478, Equal Employment Opportunity in the Federal Government, 34 FR 12985 (August 8, 1969), to prohibit discrimination in federal employment based on status as a parent

This document is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

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