

QUICK REFERENCE GUIDE FOR SEXUAL ORIENTATION NONDISCRIMINATION IN THE WORKPLACE

This brochure is designed to provide the manager with a quick reference guide to sexual orientation issues and concerns that arise in the workplace and to help them comply with the USDA sexual orientation nondiscrimination policy. These common concerns and issues, and how to prevent or address them, are summarized for your reference. Where appropriate, additional resources or contacts are referenced for your information.

1.) CREATING A SAFE WORK ENVIRONMENT

It is USDA policy to provide a safe working environment for all employees. Managers that allow the following behaviors to occur or persist may create an environment that reduces productivity, that is hostile to **gay, lesbian, bisexual, transgender (GLBT)** employees or their families, and that can lead to more serious problems or actions against employees or managers:

-Harassment: Federal Courts have ruled, "When the workplace is permeated with discriminatory intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive workplace environment, Title VII is violated." (Harris v. Forklift Systems, Inc, 510 U.S.17, 21 (1993).

-Same-Sex Harassment:
The U.S. Supreme Court has ruled that discrimination consisting of same-sex sexual harassment is actionable under

Title VII. (Oncale v. Sundowner, No. 96-568, March 4, 1998). This has been defined to cover individuals **regardless** of their perceived or actual sexual orientation.

-Sexual Orientation Harassment: Includes GLBT jokes, actions, comments, innuendo or other behavior that denigrates or segregates GLBT employees. Managers that allow these behaviors to occur or persist may create a hostile work environment that can reduce productivity and morale of GLBT employees, or their families, and can lead to more serious problems or actions against employees or managers.

-Workplace Communications:
Derogatory communications should be addressed just as any other harassing activity would be. The use of government communication systems are for **official** purposes only and are not to be used to harass other employees, or to express personal opinions that are contrary to the Department's nondiscrimination policies.

-Removal of authorized postings or notices: Once materials are approved for posting, no one should remove these items without permission. The removal or defacing of official notices creates a hostile work environment, particularly if the actions go unaddressed.

-Religious objections: Title VII does not require an employer to accommodate an employee's desire to impose his/her religious beliefs upon their coworkers, or require an employer to accept burdens that would result from allowing actions that demean or degrade members of its workforce (Peterson v. Hewlett-Packard, 9th Cir.2004).

2.) RIGHTS AND BENEFITS

-Sick leave: Employees may request sick leave to care for a family member who is incapacitated by a medical or mental condition, attend to a family member with a serious health problem, or to make arrangements necessitated by the death of a family member or attending the funeral of a family member (5CFR 630.401).

Family member has been defined as, "Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship" (5CFR630.201).

-Attendance at Agency-sponsored diversity events:
Supporting Department or Agency diversity events fosters a welcoming environment for all employees and can be used to show support for civil rights performance elements. Managers should participate by example, encourage employee participation and, as appropriate, allow work time to participate in these activities.

-Avenues of redress: Employees are protected from discrimination from non-merit activities under the Civil Service Reform Act of 1978. When applicants or employees believe that a prohibited personnel practice has been committed against them that constitutes discrimination based upon sexual orientation, they may seek assistance under certain circumstances from:

- Merit Systems Protection Board
- Office of Special Counsel,
- Negotiated Grievance Procedures
- Agency Grievance Procedures

3.) GLBT – SPECIFIC ISSUES

-Coming out: To come out is to identify as gay, lesbian, bisexual or transgender. Coming out can be one of the most challenging events in a person's life, but also one of the most rewarding.

When an employee shares his/her sexual orientation with a manager, that manager should ensure that the employee's confidentiality is maintained and should ask the employee whether others know or need to know of his or her sexual orientation. An employee may not be comfortable sharing that information, or be certain of their orientation.

Whereas most employees can choose whether to disclose certain personal information at work, transsexuals who plan to transition gender do not have that option. Given that a transsexual employee is obligated to "come out" to his/her employer in order to satisfy the requirement to live full-time in his/her new gender role for at least a year before the transition is complete, employers necessarily become involved in the employee's transition. There are established standards and protocols for employees transitioning gender. Contact your Human Resources Office, Civil Rights Office or the Departmental GLBT SEPM for more information or assistance.

Managers should ensure that the work place remains a safe space for all employees. They can help ensure that the work environment is a safe space for all employees by making sure that sexual orientation and gender identity are included in diversity training materials and policies.

-Family Issues: GLBT employees reflect a diversity of familial relationships, just as other employees do. GLBT employees' relationships should be accorded the same respect and considerations as other employees. Office activities and events for which opposite-sex spouses are included should also include same-sex spouses, partners and significant others to help foster a welcoming environment for GLBT employees.

-Security Clearances: Managers should be aware that E.O. 12968 signed in 1995 allowed GLBT employees to hold security clearances. Managers and other employees need to know of this in the event that a GLBT employee who is "out" undergoes an investigation for a clearance.

REFERENCES: For more information contact:

**William Scaggs, Departmental Manager
GLBT Special Emphasis Program
Reporters Building, Suite 266, Mail Stop 9480
1400 Independence Ave., SW
Washington, DC 20250-9617
E-Mail: william.scaggs@usda.gov
Phone: (202) 720-9664**

USDA GLOBE – **USDA GLOBE is an officially recognized employee organization of USDA for all gay, lesbian, bisexual, transgender employees, and their friends. For more information contact Blake Velde at blake.velde@usda.gov**

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Gay, Lesbian, Bisexual,
Transgender
Special Emphasis Program

Office of the Assistant
Secretary for Civil Rights

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