



U.S. OFFICE OF SPECIAL COUNSEL

Federal Protections for Lesbian, Gay, Bisexual, and Transgender (LGBT) Individuals

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency charged with safeguarding the merit system by protecting federal employees and applicants from prohibited personnel practices, especially retaliation for whistleblowing.

It is a prohibited personnel practice, or PPP, for an agency official to discriminate against federal employees or applicants based on sexual orientation or gender identity. *See* 5 U.S.C. § 2302(b)(1) (prohibits discrimination based on, among other things, sex) and 5 U.S.C. § 2302(b)(10) (prohibits discrimination based on conduct not adversely affecting job performance). An agency official, however, may take action based on conduct, even if it occurred off duty, if it adversely affects job performance.

Example 1: A supervisor discovers that a male subordinate employee is going to marry another man, and begins to treat the gay employee differently. For instance, the employee's time and attendance is scrutinized daily and the employee is forced to take leave for as little as three-minute absences, while other employees' similar absences are ignored. The supervisor also changes the targeted employee's schedule to night shift work and openly disparages the employee at staff meetings. The supervisor's actions constitute a PPP.

Example 2: An employee who was born male, but identifies as female, notifies her supervisor that she will undergo a gender transition, legally change her name, and start coming to work dressing and presenting as a woman. Feeling uncomfortable with the transgender employee's decision, the supervisor requires the employee to work from home and does not permit her to participate in staff meetings or interact with clients. The supervisor's actions constitute a PPP.

OSC has authority to investigate and prosecute PPP complaints alleging sexual orientation and gender identity discrimination. In such cases, OSC may:

- Seek stays of personnel actions against complainants while investigations are pending;
- Obtain full corrective action (for example, reinstatement or back pay) for complainants; and
- Seek disciplinary action against alleged wrongdoers.

Also, there is no statute of limitations to file PPP complaints with OSC. However, individuals should file such complaints as soon as possible to allow for timely and appropriate investigations.

Depending on the circumstances, complainants also may seek assistance with PPP complaints alleging sexual orientation or gender identity discrimination from one of the following:

- Merit Systems Protection Board (MSPB);
- Agency's grievance procedures; or
- Union's negotiated grievance procedure.

Individuals should review the rules and procedures specific to the MSPB and their respective agencies and/or unions before deciding whether and how to proceed with their PPP complaints.

To file a PPP complaint with OSC, or to raise questions or concerns about the PPP complaint process, please call (800) 872-9855 or visit OSC's website at www.osc.gov.