



U.S. OFFICE OF SPECIAL COUNSEL

Directive

No. 59

GENDER TRANSITION POLICY

I. Purpose.

This directive sets forth the policy and procedures for facilitating a gender transition at the U.S. Office of Special Counsel (OSC). It is meant to ensure non-discrimination against and foster inclusion of transgender and gender non-conforming employees and applicants. An individual's gender identity and gender transition are inherently personal matters. Some individuals may request workplace assistance or changes, whereas others will seek no workplace acknowledgement or changes at all. Accordingly, this Policy does not anticipate every workplace situation that might arise, and the needs of an individual employee or applicant should be addressed on a case-by-case basis. This Policy addresses some of the most common changes and questions that may arise during a gender transition, and provides guidance on appropriate handling of transition-related issues.

II. Authorities.

Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, *et seq.* Civil Service Reform Act of 1978, 5 U.S.C. § 2301, *et seq.* Executive Order 11478, as amended. *Macy v. Holder*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (Apr. 20, 2012). *Jameson v. USPS*, EEOC Appeal No. 0120130992, 2013 WL 2368729 (May 21, 2013). *Complainant v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120133123, 2014 WL 1653484 (Apr. 16, 2014). *Lusardi v. Dep't of the Army*, EEOC Appeal No. 012013395, 2015 WL 1607756 (Apr. 1, 2015). *Lusardi v. Dep't of the Army*, PPP Report (OSC published in redacted format Aug. 8, 2014), https://osc.gov/Resources/2014-08-28_Lusardi_PPP_Report.pdf. *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace* (OPM rev. 2015), www.opm.gov/diversity/Transgender/Guidance.asp. *The Guide to Personnel Recordkeeping* (OPM rev. 2011), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/personnel-recordkeeping/recguide2011.pdf>. *A Guide to Restroom Access for Transgender Workers* (OSHA 2015), <https://www.osha.gov/Publications/OSHA3795.pdf>

III. Policy.

OSC—like all of the federal government—must maintain a workplace free from any discrimination and harassment based on sex, including transgender status, gender identity or expression, sexual orientation, gender non-conformity, or sex stereotyping of any kind. OSC also

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seeks to promote an inclusive working environment for transgender and gender non-conforming employees, and to facilitate workplace gender transitions, where appropriate.

IV. Definitions.

Gender identity: an individual's internal sense of being male, female, or something not defined by traditional definitions of male or female.

Gender expression: a person's external characteristics and behaviors (such as appearance, dress, mannerisms, speech patterns, and social interactions) that may be perceived as masculine or feminine.

Assigned sex: refers to the sex individuals are interpreted as at birth, often male, female, or intersex. A person's assigned sex usually corresponds to their gender identity.

Transgender: an umbrella term that refers to people whose gender identity and/or expression is different from the sex assigned to them at birth. The term transgender woman typically refers to someone who was assigned the male sex at birth but who identifies as a female. Likewise, the term transgender man typically refers to someone who was assigned the female sex at birth but who identifies as male. A person does not need to undergo any medical procedure to be considered transgender. Further, some individuals who fall within this definition of transgender do not identify themselves as such but rather identify simply as men and women, consistent with their gender identity.

Gender non-conforming: a broad term that is sometimes used to refer to people who do not appear, behave, or identify in conformity with gender norms, stereotypes, expectations, or preferences, or whose gender expression does not fit neatly into commonly used categories.

Gender transition: the process by which some transgender people begin living as the gender with which they identify, rather than the sex assigned to them at birth. There is no set process an individual has to follow to transition. For some individuals it will include changing their name and/or gender on legal documents, while for others, it may include medical treatment such as hormones, counseling, and/or surgery. However, surgery or other medical treatments are not necessary for someone to have transitioned to their identified gender.

Sexual orientation: a person's physical, romantic, or emotional attraction to people of the same and/or opposite sex. Sexual orientation is distinct from gender identity. A person's gender identity may be unrelated to their sexual, romantic, or emotional attraction. For example, transgender individuals (just like all individuals) may identify as gay, lesbian, bisexual, asexual, or heterosexual.

LGBT: an acronym that is often used as an umbrella term referring to lesbian, gay, bisexual, and transgender individuals.

V. Non-discrimination and Inclusion.

Title VII of the Civil Rights Act of 1964 and the Civil Service Reform Act of 1978 prohibit discrimination and harassment based on sex, including transgender status, gender identity or expression, sexual orientation, gender non-conformity, or sex stereotyping of any kind. Executive Order 11478 (as amended), as well as OSC's Equal Employment Opportunity (EEO) Non-Discrimination Policy (Directive No. 51) and Anti-Harassment Policy (Directive No. 58), prohibit discrimination and harassment based on sex, gender identity, and sexual orientation. All employees and applicants, including those who identify as lesbian, gay, bisexual, and/or transgender, are protected from sex discrimination.

The U.S. Equal Employment Opportunity Commission (EEOC) has ruled that gender-based stereotypes, preferences, expectations, or perceptions, or the comfort level of coworkers or supervisors, should not interfere with the ability of any individual to work free from workplace discrimination or harassment. Accordingly, employees at OSC may express their gender identity and their sexual orientation without fear of adverse consequences or mistreatment. In addition, OSC is committed to fostering a workplace where all employees can be their authentic selves, including revealing or expressing their gender identity or sexual orientation, if desired. OSC also will make efforts to recruit and maintain a diverse workforce that reflects the public OSC serves, including LGBT individuals.

Management and supervisory officials at OSC must lead by example and communicate clearly with employees about what behavior is lawful and appropriate to avoid all forms of discrimination and harassment, and about the consequences for unlawful behavior. Pursuant to our EEO Non-Discrimination, Anti-Harassment, and Gender Transition Policies, if supervisors become aware of derogatory remarks or demeaning behavior toward a transgender employee, they must take appropriate steps to immediately and effectively stop these actions, as they would with potential harassment on any other protected basis.

VI. Privacy and Confidentiality.

Some employees may discuss their gender identity or transgender status openly; others may choose to keep that information private. If any OSC staff member learns that an employee is going through, has gone through, or is contemplating a gender transition, the information should be treated with the same sensitivity and confidentiality as would be accorded information about any other employee who is going through a significant life experience. This will leave the employee free to decide when, with whom, and how much to share information that the employee may consider private. Gossiping or speculating about an individual's gender identity, transgender status, or gender transition is inappropriate and can be harmful and disruptive to the workplace.

Critically, disclosure by management or supervisory officials at OSC of personal information about an employee's gender identity or transgender status may result in disclosure of confidential information prohibited under laws such as the Rehabilitation Act of 1973 and the Privacy Act. This type of information can only be shared with the employee's consent, as needed to implement changes requested by that employee, or as otherwise requested by that employee.

VII. Obtaining a Change of Name and/or Gender in OSC's Records

Transgender employees may wish to change their official personnel records or other records at OSC to reflect the gender with which they identify.

Many records can be changed to reflect a person's preferred name without the employee submitting official documentation to support the change (e.g., staff directories, intranet profiles, business cards, email addresses, and office nameplates). When a transgender employee requests that OSC change these types of records to reflect a change in name and/or gender, OSC will make efforts to do so within the same amount of time the agency would make other similar records changes for all employees (e.g., name changes after marriage).

Management or supervisory officials at OSC receiving such a request should refer the matter to the Gender Transition Coordinator (GTC) for further processing. The GTC will coordinate with the Human Capital Office (HCO) and any other applicable offices to identify and ensure that all records are changed in a timely manner. The transgender employee has an obligation to contact the GTC to request changes, provide the necessary documentation, and cooperate with follow-up information requests by the GTC. For the GTC to effectuate any requested records changes, the employee will also be required to complete any necessary forms required for record changes in a timely manner. However, it is the GTC's role to determine the appropriate individuals to contact for record changes and to identify in consultation with the employee the records that need to be changed.

Certain types of records (e.g., those pertaining to official personnel records, payroll, retirement accounts, or government identification tags) require official documentation and/or particular processes before the transgender employee's name and/or gender can be changed in the records. For example, consistent with the Privacy Act, employees seeking to amend records in their Official Personnel Folder (OPF) must submit a formal request, with supporting documentation, to OSC's Privacy Act Officer. *See* 5 U.S.C. § 552a(d); 5 C.F.R. § 1830.4.

If the record change requires official documentation as evidence of the name and/or gender change, OSC will make efforts to make the change within the same amount of time the agency would make other similar records changes for all employees, but whenever possible no later than approximately 60 days¹ from receipt of the required documentation as set forth in the Office of Personnel Management's (OPM) "[The Guide to Personnel Recordkeeping](#)," Chapter 4, *How to Reconstruct a Personnel Folder Due to a Change in Gender Identity*.

¹ We note that some record changes, such as changes to the Personal Identity Verification card, may take longer than 60 days in some circumstances. OSC will make efforts to expedite this process.

Consistent with OPM's Recordkeeping Guidance, the transgender employee should submit acceptable evidence of gender identity, if available, and evidence of the new name, if changed, to amend records requiring evidence to support a record change. State and local laws vary as to whether a driver's license or other State form of identification documents may be issued to reflect a gender change. Possession of a valid passport in the employee's new name and gender is per se acceptable evidence of the new name and gender, and no further evidence need be provided. If evidence of change of gender in the identity documents is not obtainable because of State or local requirements or any other reason, the employee's OPF may still be reconstructed with the employee's new name and gender to reflect a change in gender identity based on a medical certification.

OSC staff involved in the agency's record-changing process will at all times ensure that steps are taken to maintain confidentiality during the gender transition process. Individuals responsible for record changes will receive training on this Policy.

HCO will assist the transgender employee with working with their insurance carriers and other benefits providers to ensure that OSC's records reflect the employee's correct name and gender. During this process, employees in transition who already have federal insurance benefits will be allowed to continue their participation in their insurance plan, and new employees must be allowed to elect participation based on the gender with which they identify.²

VIII. Use of Preferred Name and Pronouns.

A court-ordered name or gender change is not required for transgender employees to obtain a change in the name used at work due to their gender identity or transgender status. All employees should be addressed by and referred to with their preferred name and pronouns, both verbally and in writing.

Although some OSC staff may inadvertently make mistakes in name and pronoun usage after a transgender person's preferred name and/or pronouns change, persistent intentional misuse of an employee's name and/or pronouns could constitute sex-based discrimination and harassment in violation of federal laws, Executive orders, and OSC's EEO Non-Discrimination, Anti-Harassment, and Gender Transition Policies. Therefore, when supervisors are aware of an employee's preferred name and pronoun, they should ensure that they and subordinates and other coworkers address and refer to the employee by that preferred name and pronoun.

As a best practice, if an OSC staff member is in good faith unsure of the correct name and/or pronouns to use when referring to or addressing any employee, the individual may politely ask the employee what name and/or pronouns the person prefers. If an individual knows the employee's preferred first name, but is unsure which pronouns to use at first, the individual may also use the employee's first name.

² In June 2015, OPM ordered that federal health insurance benefit providers may not have a blanket exclusion for transgender-related coverage.

IX. Ensuring Access to Appropriate Facilities, Including Restrooms and Locker Rooms, If Available.³

In accordance with rulings by the EEOC and prohibited personnel practice reports published by OSC, as well as guidance from OPM and the Department of Labor's Occupational Safety and Health Administration, individuals must be allowed to use restrooms consistent with their gender identity. In practice, this means that a transgender woman must be permitted to use the women's restroom once she begins working as a woman, and a transgender man must be permitted to use the men's restroom once he begins working as a man.

OSC will not require a transgender employee to have undergone any particular medical procedure, or answer questions about or provide proof that the employee underwent any procedure, to have access to a restroom designated for use by a particular sex that corresponds with the employee's gender identity.

If a unisex or single-stall restroom is available for general employee use in an OSC facility, along with restrooms designated for a single sex, any employee may use that unisex or single-stall restroom. While use of a single stall restroom might be incorporated into a transition plan at the employee's request, OSC will not require that an employee use such a restroom instead of the common restroom designated for a single sex.

Currently, OSC facilities do not have locker rooms. In the future, if an OSC facility has locker rooms designated for use by a particular gender, OSC will allow employees access to locker rooms corresponding to their gender identity and apply the same standards regarding restroom usage outlined above. In those circumstances, any employee having a need or desire for additional privacy, for any reason, may request the personal use of an already available private room or the use of a curtain in the locker room, where feasible. Any alternative arrangement for an employee will be provided in a way that allows the employee to keep the reason for the request for increased privacy, such as an employee's transgender status, confidential.

X. Medical Leave.

Employees receiving medical treatment as part of a gender transition may use sick or other leave available under applicable regulations and policies, just as they may for medical treatment sought for any other reason. Similarly, if the employee wants to request the use of leave through the Family and Medical Leave Act (FMLA) for leave related to a transition or for leave related to the transition of a family member, the employee must follow OSC's procedures to request FMLA leave and cannot do so through this Policy. *See* OSC's applicable leave policies for more detailed information on requesting annual, sick, or other leave.

If a transgender employee wants to request a disability-related reasonable accommodation, such as medically-related leave, the employee must request the accommodation through the OSC's

³ If OSC has restrooms and/or locker rooms at leased office spaces, OSC will make efforts to provide equal access to those facilities, and will work with the lessor to ensure that none of its employees are subjected to discrimination.

Procedures for Accommodation of People with Disabilities (Directive No. 52), and cannot request an accommodation through this Policy.⁴

XI. Hiring Process.

Consistent with Section V of this Policy, hiring officials may not discriminate against applicants for employment (or promotion) based on sex, including transgender status, gender identity or expression, gender non-conformity, or sex stereotyping of any kind. An individual is not obligated to affirmatively disclose their gender identity or any gender transition-related information during the hiring process. Hiring documents (e.g., application materials) relating to an individual who previously transitioned may indicate a name and/or gender that does not correspond with information gathered during background or reference checks. If this occurs, a hiring official should not automatically assume that the inconsistency is a mistake or the result of deception or intentional misrepresentation. Rather, if a hiring official has any questions or concerns about the inconsistency of names and/or genders on hiring documentation, the hiring official should be directed to HCO, which will obtain any needed clarification from the applicant. At no time should a hiring official ask an applicant about the applicant's gender identity or related information.

XII. Training.

This Policy will be incorporated into any new-employee training or orientation. OSC will also incorporate information regarding transgender employees in general OSC-wide EEO or diversity communications and trainings, as appropriate. In addition, OSC should develop specialized training on this Policy to provide, as necessary, to particular individuals, in particular offices, or OSC-wide. For instance, consistent with Section VII of this Policy, all individuals responsible for transition-related record changes will receive training on this Policy.

When a transgender employee notifies OSC of a planned transition, OSC will determine whether training would be beneficial for management, supervisors, and coworkers in the employee's office. Consideration should be given to the employee's perception of the work environment and desire for confidentiality. As an example, training could include cultural competency education or training on sex-based discrimination and harassment under federal laws and Executive orders. Such training should be presented as close to the date of the employee's transition as possible, with the date and proposed content of the training shared with the employee in advance.

XIII. Workplace Transition Process.

OSC staff should treat transitioning employees in a respectful manner. Intentionally preventing, delaying, or otherwise impeding reasonable workplace changes related to an employee's transition will not be tolerated and may violate a law, rule, regulation, or OSC policy. If a transitioning employee requests workplace changes requiring assistance, OSC staff will work

⁴ This Policy makes no legal determination as to whether any transgender-related medical condition(s) may meet the Rehabilitation Act's definition of a disability.

with each employee individually to ensure a successful workplace transition, and to support management, staff, and the employee in addressing any questions or concerns that arise.

Because individual circumstances may differ, OSC will strive to ensure the gender transition process is fluid and adaptable. The following outlines an example of what a transition process may look like:

A. Initiating the Workplace Transition Process

Transgender employees who wish to request changes in the workplace (e.g., name and/or pronoun usage, records, restrooms or locker rooms, a hardship transfer) associated with a transition must request the changes through their supervisors or the GTC.

B. Developing a Gender Transition Plan

If a transitioning employee seeks workplace changes that require OSC's assistance, the employee's supervisor, in consultation with the employee, the GTC, and other applicable offices, should develop a reasonable transition plan for OSC that addresses the workplace changes and assistance the employee seeks and is tailored to the employee's circumstances and comfort level. The transition plan should not contain any personal information about any medical treatment the employee may be receiving.

Workplace changes or a transition plan may not be necessary or appropriate in all circumstances. For example, some transgender employees may not request any workplace changes, or may only seek discrete changes that need not be disclosed to other employees. Additionally, if a newly-hired or transferred employee presents as the gender identified with when the employee first meets coworkers and management and supervisory officials, a transition plan and changes may not be requested at all. In this situation, the employee may either disclose the information or not, in accordance with the employee's preference.

Examples of items that the transition plan might address, subject to what the transitioning employee seeks, include:

- i. *The workplace transition date.* This is the date on which the employee will begin to work openly full-time in the workplace consistent with the employee's gender identity. The transitioning employee will know best when this should occur as they will be able to determine all of the relevant factors to be considered when choosing this date.
- ii. *The employee's preferred name and pronouns, and the date that the employee would like to begin being called by the preferred name and pronouns.* This date ordinarily should correspond with the date the employee chooses to begin working openly and full-time in the workplace consistent with the employee's gender identity.

- iii. *The date the employee will begin using the restroom (and locker room, if available) of the gender with which the employee identifies.* This date ordinarily should correspond with the date the employee chooses to begin working openly and full-time in the workplace consistent with the employee's gender identity.
- iv. *Information regarding record changes.* This may include: the required documentation the employee may need to provide for requested record changes; the date by which the employee should provide the documentation; the planned date by which OSC will change all employee personnel records to reflect the correct name, pronouns, and gender of the employee. OSC will coordinate record changes to coincide with the official transition date or soon after so as not to reveal sensitive information prior to the employee's transition.
- v. *Informing others about the transition.* The employee may or may not want others to know about the transition. The employee has discretion over whether, how, and when to inform others, such as management, supervisors, coworkers, and external parties (i.e., individuals who do not work for OSC but who may interact with the employee on a regular basis for work purposes). The employee may choose to tell others about the transition personally, or may ask management or supervisory officials at OSC to express support and/or help communicate transition-related information. Similarly, the employee may choose to tell others individually or in a group setting. If the employee decides that a supervisor should inform others about the transition, the supervisor should only provide the information that the employee wishes to be shared, and should share it in the manner the employee requests.
- vi. *Leave or Accommodations.* OSC will refer the employee to the relevant information in OSC policies and directives regarding leave and reasonable accommodation requests.
- vii. *Training.* The transition plan should also address whether training will be provided to coworkers and supervisors, and the date by which the training will be provided.

OSC staff may find a sample workplace gender transition plan in the *Appendix – Sample Workplace Gender Transition Plan*.

C. *Implementing the Gender Transition Plan*

The transitioning employee's supervisor, in coordination with the GTC and other applicable offices, will ensure that OSC timely implements the transition plan in accordance with this Policy.

Employees should feel free to raise concerns about planning or implementing a gender transition, or about any other aspects of this Policy, directly to their supervisor, the GTC, the Chief Human Capital Officer, or the EEO Director.

D. Ensuring Appropriate Follow-Up and Oversight

The transitioning employee and their supervisor will ensure that all workplace changes were completed, that all records were changed, and that there are no further questions or issues.

If any management or supervisory official at OSC receives information about potential discrimination or harassment against the transgender employee or any other OSC employee, they should contact the employee's supervisor, the GTC, any member of OSC's senior staff, an EEO counselor, or the EEO Director. Similarly, coworkers also are encouraged to report suspected discrimination or harassment consistent with OSC's Anti-Harassment Policy. However, it is the individual's obligation to timely raise any potential EEO issue with an EEO counselor in accordance with 29 C.F.R. Part 1614 and as described in OSC's EEO Non-Discrimination Policy.

XIV. Additional Resources.

1. No. 51 - Equal Employment Opportunity, Non-Discrimination Policy
2. No. 52 - Procedures for Accommodation of Persons with Disabilities
3. No. 58 - Anti-Harassment Policy
4. Employee Assistance Program, (1-800-222-0364) or <http://foh.hhs.gov/services/EAP/EAP.asp>
5. *Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment:*
 - a. *A Guide to Employment Rights, Protections, and Responsibilities* (OPM, EEOC, OSC, MSPB 2015), <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/addressing-sexual-orientation-and-gender-identity-discrimination-in-federal-civilian-employment.pdf>

Issued June 10, 2016, by:



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Distribution: All Employees

Lead Office: Immediate Office of the Special Counsel

APPENDIX

SAMPLE WORKPLACE GENDER TRANSITION PLAN

This sample gender transition plan addresses some of the processes and issues that may occur at OSC during an employee's transition. This plan should be prepared by the transitioning employee, their supervisor, and the Gender Transition Coordinator (GTC). Because every transition and workplace is different, the plan should be customized to fit OSC's structure and procedures, and should be modified with each transitioning employee to meet their individual needs.

I. Before the Employee's Transition Begins in the Workplace

A. Conduct Necessary Meetings

1. The transitioning employee should meet with their supervisor to share their transgender status and intent to transition.
2. The transitioning employee and their supervisor should meet with the GTC to discuss OSC's Gender Transition Policy, any requested changes of name and/or gender in OSC's records, and any transition-related information (e.g., healthcare benefits). They also should discuss all of the individuals who will need to be included in any transition plan and when each will need to become involved in the transition process. (Note: Not all must become aware or involved at the same time.) The participants in the transition process should set up a realistic timeline that predicts how long each step should take.
3. With the transitioning employee's consent, management beyond the employee's supervisor should be made aware of the employee's planned transition so that leadership can express support when the transition is made known in the workplace.

B. Create Customized Gender Transition Plan

1. Select date when the transition will officially and formally occur. This typically means the date that the transitioning employee will begin to work openly full-time consistent with their gender identity. This typically will also be the date that the transitioning employee will change their name and pronouns. The employee may or may not choose to begin using the restroom associated with their gender identity on this same date.
2. Decide the method and format for informing the transitioning employee's coworkers of the employee's transition. The employee should decide whether they would like to make some coworkers aware of the transition on a one-on-one basis before it is officially announced.

3. Determine what, if any, training should be provided to coworkers and other supervisors.
4. Ascertain what updates should be made to the transitioning employee's records, photographs, business cards, email address, etc., and when these updates will be made. Keep in mind that some changes within certain processes may take longer than others.
5. Identify the dates of any leave, if needed, for any pre-scheduled medical treatments for the transitioning employee.

II. The Day the Employee's Transition Is Made Known to Others in the Workplace

- A. Consistent with the transitioning employee's wishes and consent, host a meeting to announce the gender transition to coworkers. The transitioning employee may choose to be present at this meeting, depending on their comfort level, and/or may choose to tell some coworkers individually. Other supervisors or managers at OSC may be present to show support or solidarity with the employee. It also may be helpful to have a handout about transgender issues at the meeting.
- B. The transitioning employee's supervisor should announce the transition, and should emphasize the following points:
 1. The transitioning employee is a valued member of OSC's workplace, and has management's support in making the transition.
 2. OSC has a Gender Transition Policy as well as EEO Non-Discrimination and Anti-Harassment Policies.
 3. The transitioning employee will be presenting themselves in accordance with their gender identity and this should be respected. The supervisor should advise coworkers of the employee's new name and preferred pronouns, the restroom (and locker room, if available) that will be used, and any other relevant information.
 4. The gender transition will not fundamentally change the workplace and that everything should proceed as it did previously.
 5. Questions should be solicited and answered appropriately by the supervisor or referred to the GTC or the transitioning employee, as appropriate.
 6. If training is going to occur, the date should be announced at this meeting. If possible, the training should occur before the first official day of the employee's workplace transition.

III. The First Official Day of the Employee's Transition in the Workplace

- A. The transitioning employee's supervisor should ensure that the following steps have been taken, in the same way they would for a new hire or transferred employee:

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1. The employee has a new identification badge, photograph, and office nameplate, if necessary.
 2. The employee's records and other work documents reflect the appropriate name and gender.
- B. The transitioning employee's supervisor will assess the overall work environment to ensure that subordinates and coworkers (and/or third parties) are not discriminating against or harassing the employee because of sex, including transgender status, gender identity or expression, gender non-conformity, or sex stereotyping of any kind.
- C. The transitioning employee's supervisor should instruct the employee to report any issues regarding inappropriate conduct or comments to the supervisor, the GTC, any member of OSC's senior staff, an EEO counselor, or the EEO Director.

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