

# Sexual Orientation and Gender Identity Discrimination

## OFCCP Protects You Against Discrimination Based on Sexual Orientation and Gender Identity

*As of April 8, 2015, OFCCP's regulations prohibit employers with a covered federal contract or subcontract from discriminating against employees and job applicants based on their sexual orientation or gender identity. President Obama directed these changes to OFCCP's regulations on July 21, 2014, when he signed Executive Order 13672. This Executive Order amended Executive Order 11246 by making it unlawful for federal contractors and subcontractors to discriminate based on sexual orientation and gender identity, as well as race, color, religion, sex, and national origin.*

### 1. How are sexual orientation and gender identity defined?

“Sexual orientation” refers to an individual’s physical, romantic, and/or emotional attraction to people of the same and/or opposite gender. Examples of sexual orientations include straight (or heterosexual), lesbian, gay, and bisexual.

The term “gender identity” refers to one’s internal sense of one’s own gender. It may or may not correspond to the sex assigned to a person at birth, and may or may not be made visible to others.

### 2. What is discrimination based on sexual orientation and gender identity?

Employment discrimination generally exists where an employer treats you, as an employee or job applicant, less favorably because of your sexual orientation or gender identity. Discrimination may also exist where an employer’s seemingly fair policies or procedures have a significant negative impact on employees or job applicants because of their sexual orientation or gender identity.

### 3. What are my rights?

You have the right to work in an environment free of discrimination, including harassment, based on your sexual orientation or gender identity. You cannot be harassed, demoted, terminated, paid less, denied employment, or otherwise treated less favorably because of your sexual orientation or gender identity. Among other things, contractors CANNOT:

- Ask employees or job applicants for any information or identification that they do not ask for from all other employees or job applicants, including medical information related to their gender identity;
- Refuse employees and job applicants the ability to use restrooms consistent with their gender identity;
- Harass employees and job applicants because of their sexual orientation or gender identity;
- Deny lawfully married same-sex spouses the same benefits they provide to opposite-sex spouses; or
- Deny same-sex partners in civil unions or domestic partnerships the same benefits they provide to heterosexual partners in such relationships.

### 4. Who does OFCCP protect?

OFCCP enforces laws that protect the rights of employees and job applicants of companies doing business with the Federal government. OFCCP’s sexual orientation and gender identity protections cover employees of companies with over \$10,000 in Federal government contracts or subcontracts in one year. At least one of the contracts or subcontracts must have been entered into or modified on or after April 8, 2015.



As of 2013, based on information from the Center for American Progress and The Williams Institute, an estimated 28 million individuals, or approximately 22 percent of all U.S. civilian workers, are employed by companies doing business with the Federal government. This includes employees at banks, meat packing plants, retail stores, manufacturing plants, accounting firms, information technology, and construction companies, among many others.

## Filing a Complaint

### 5. What do I do if I believe my employer discriminated against me because of my sexual orientation or gender identity?

If you think you have been discriminated against in employment, or in applying for employment, because of your sexual orientation or gender identity, you can file a complaint with OFCCP. You do not need to know with certainty that your employer is a federal contractor or subcontractor in order to file a complaint.

### 6. How do I file a sexual orientation or gender identity discrimination complaint with OFCCP?

You may file a discrimination complaint by:

- Completing and submitting a form online through OFCCP's Web site;
- Completing a form in person at the OFCCP office nearest to where you live or work; or
- Mailing a completed form to the OFCCP regional office that covers the state where you live or work.

The form is available online at <http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm> and in paper format at all OFCCP offices. To find the office nearest you, visit the online listing of OFCCP offices at <http://www.dol.gov/ofccp/contacts/ofnation2.htm>.

You must file your complaint within 180 days from the date of the alleged discrimination, *unless* the filing date is extended for a good reason. In addition, you must remember to sign your completed complaint form. If you fail to do so, OFCCP will still take your complaint but an OFCCP investigator will ask you to sign the form during a follow-up interview.

### 7. Can my employer fire or demote me because I filed a complaint?

No. Your employer may not retaliate against you for filing a complaint or participating in an investigation. You are protected from harassment, intimidation, threats, coercion, or discrimination for asserting your rights.

### 8. Can I file a discrimination complaint with both OFCCP and the Equal Employment Opportunity Commission (EEOC)?

Yes. However, if you file a complaint with OFCCP, you do not have to file a separate complaint with EEOC; your complaint will be considered to be filed with both agencies. OFCCP accepts and investigates individual and class complaints alleging discrimination based on sexual orientation or gender identity, including transgender status. OFCCP analyzes each sexual orientation or gender identity complaint it receives and coordinates with, and refers complaints to, EEOC on a case-by-case basis.

### 9. What will happen if there is a finding that I was a victim of employment discrimination?

You may be entitled to a remedy that places you in the position you would have been in if the discrimination had never happened. You may be entitled to be hired, promoted, reinstated, or reassigned; and you may be entitled to receive back pay, front pay, a pay raise or some combination of these remedies. In addition, if OFCCP finds that the federal contractor or subcontractor engaged in discrimination, and the company refuses to remedy that discrimination, OFCCP could seek to have the company debarred or removed from consideration for future federal contracts or have the company's current contracts or contract modifications cancelled.

#### *For more information:*

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Please note that this fact sheet provides general information. It is not intended to substitute for the actual law and regulations regarding the program described herein.

