

## **U.S. Office of Personnel Management**

### **Guidance Regarding Gender Identity and Inclusion in the Federal Workplace**

#### **Law, Policy and Purpose**

It is the policy of the Federal Government to treat all its applicants and employees with dignity and respect and to provide a workplace that is free from discrimination. The U.S. Supreme Court held in *Bostock v. Clayton County*, 590 U.S. \_\_\_\_\_, 140 S. Ct. 1731 (2020), that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of gender identity and sexual orientation. Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation directs Federal agencies to fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation. Executive Order 14035 on Diversity, Equity, Inclusion and Accessibility in the Federal Workforce states that each Federal employee should be able to openly express their sexual orientation, gender identity, and gender expression and have these identities affirmed and respected without fear of discrimination, retribution, or disadvantage, and it directs Federal agencies, to the extent permitted by law, to take actions to ensure that all Federal employees have their respective gender identities accurately reflected and identified in the workplace.

Agencies should revise and implement their policies, practices, and any associated trainings so that they afford a non-discriminatory and inclusive work environment to applicants and employees irrespective of their sex, gender identity, gender expression, or sexual orientation, consistent with current law and executive policy. Agencies also should take steps to implement or increase the availability of training programs on gender identity and inclusion in the Federal workplace for employees, managers, and leadership.

The purpose of this document is to provide guidance to agencies regarding gender identity inclusion in the Federal workplace. In providing this Guidance, the Office of Personnel Management (OPM) seeks to support agency compliance with nondiscrimination laws and executive policies and to foster a welcoming and supportive workplace for all applicants and employees across the Federal Government by providing a baseline of gender identity inclusion practices. Agencies are encouraged to create or update their agency-level policies on gender identity inclusion, consistent with this Guidance.

## **Confidentiality and Privacy**

All applicants and employees should have control, to the extent possible, over when, with whom, and how much they share about their gender identity or sex characteristics. Information about an applicant's or employee's gender identity or sex characteristics (such as the sex they were assigned at birth, medical history regarding gender or sex, or intersex status) is potentially sensitive personal information. Applicants and employees may choose to openly discuss their gender identity or sex characteristics or to keep those matters private, consistent with applicable laws, regulations, and policies. There may be instances where applicants or employees are required to disclose some aspects of this information, such as during a background security investigation that requires the listing of formerly-used names or during the onboarding process where sex or gender markers are captured. In protecting this information, the agency is responsible for complying with any applicable laws, regulations, and policies. For example, where the Privacy Act of 1974 (5 U.S.C. § 552a) applies, certain conditions must be met for disclosure of records contained in a system of records, and there are various other protections the agency would be responsible for implementing. Even if there is not otherwise a restriction on disclosure in applicable law, regulation, or policy, human resources personnel, managers, and coworkers should be aware of the potential sensitivity of gender identity or sex characteristics information and, to the extent possible, are advised to avoid disclosing such information, absent the consent of the individual.

## **Legal Name Change**

Legal name changes related to gender identity are handled in the same way as any other legal name change in the employee's Official Personnel Folder (OPF) and other employee records reflecting legal names (*e.g.*, pay accounts and benefits documents). If an employee seeks to change their legal name throughout their entire OPF, including historical personnel records, instructions for doing so are set forth in [OPM's Guide to Personnel Recordkeeping](#).

## **Names and Pronouns**

All applicants and employees should be addressed by the names and pronouns they use to describe themselves. Using correct names and pronouns helps foster workplaces free of discrimination and harassment. This practice also creates an inclusive work environment where all applicants and employees are treated with dignity. The isolated

and inadvertent use of an incorrect name or pronoun will generally not constitute unlawful harassment, but, as [the Equal Employment Opportunity Commission \(EEOC\) has explained](#), continued intentional use of an incorrect name or pronoun (or both) could, in certain circumstances, contribute to an unlawful hostile work environment.

For an employee to be referred to by the name they choose and their identified pronouns in everyday interactions, both written and oral, agencies should not require a legal change of name or gender marker, any medical certification, or any other documentation.

Agencies should allow employees the option to have the name they use reflected in all electronic and physical places where names are displayed, including email addresses, email address displays, name displays in virtual meeting platforms, email signature blocks, employee directories, employee profiles, business cards, name plates, and name tags, either from the time an employee onboards or promptly after they request an update if they are a current employee.

Agencies should take steps to streamline the process for updating names so that applicants and employees can request an update once and have the update reflected across information technology (IT) systems, to resolve or avoid the issue of inconsistency of names in different systems. Agencies should communicate with all applicants and employees about the process for updating names in IT systems, so they know how to initiate the process and what to expect regarding timing and consistency of updates in all IT systems.

Agencies should also take steps to provide the option for employees to include the pronouns they use in employee systems and profiles, including email signature blocks, employee directories and employee profiles.

Agencies should implement this guidance to the extent practicable, and where necessary should explore any changes to agency human resources or IT systems that may hinder the agency's ability to use these best practices.

### **Sanitary and Related Facilities**

The Department of Labor's Occupational Safety and Health Administration standards require agencies to make access to adequate sanitary facilities available for all employees to use when they need to in order to avoid serious health consequences. As [the EEOC has explained](#), under Title VII, agencies should allow access to common and

single-user restrooms and other facilities corresponding to an employee's gender identity. Agencies should not condition this access on an employee having undergone or providing proof of any gender affirming surgeries or other medical procedures. Agencies should not limit an employee to use facilities that are located at an unreasonable distance from the employee's work station, or inconsistent with the employee's gender identity. Agencies should not restrict any employee to a single-user facility instead of common facilities; agencies can, however, make a single-user facility available to all employees who might choose to use it. Agencies should also explore opportunities to expand the availability of all-gender restrooms and facilities in Federally owned and leased workplaces in coordination with the landholding agency with jurisdiction over the facility.

### **Workplace Practices to Support Transitioning Employees**

Any employee's gender transition should be treated with privacy and confidentiality in the workplace. Each agency should establish its own internal policies and procedures to support transitioning employees consistent with this Guidance, agency-specific organizational structures, and the individualized needs of the transitioning employee. Those policies should address, at a minimum, the following:

- The type of support a transitioning employee can expect from supervisors, managers, human resources personnel, and agency employee support services, such as access to Employee Assistance Programs and other employee resources;
- The provision of a central point of contact in a human resources office or another similar office charged with working with any transitioning employee who requests support; and
- A procedure that an individual employee and human resource office or similar office may use to support a workplace transition consistent with the employee's individualized needs. The procedure could include, with the transitioning employee's input and consent, when and which colleagues to notify of a transition; the timing for name changes and pronoun changes, where applicable and consistent with this Guidance, in email, IT systems, and employee profiles; and a process for any gender identity inclusion training for supervisors, managers, and coworkers if such training would be beneficial.

Agencies should make their agency-specific transition policies and procedures accessible and available to all employees—for example, by posting them on prominent agency intranet sites where all employees can easily find them.

Employees receiving medical treatment as part of their transition may use sick or other leave under applicable regulations and policies, just as with medical treatment for any other reason.

### **Dress and Appearance Standards**

Consistent with applicable law, agencies should review and, as necessary, update relevant policies so that all employees are allowed to dress and present consistent with their gender identity. Employees transitioning in the workplace decide when to start dressing and presenting consistent with their gender identity.

### **Equal Employment Opportunity and Anti-Discrimination Resources**

EEOC is responsible for enforcing Federal nondiscrimination employment laws, including Title VII. Employees or applicants who believe they have been discriminated against on the basis of sex, including sexual orientation and gender identity, may file a complaint through their agency's Federal sector equal employment opportunity (EEO) complaint process. Agencies are required to provide information about the EEO complaint process and how to contact the agency's EEO office, and generally, individuals must contact the EEO office within 45 calendar days from the day the alleged discrimination occurred. [EEOC's website](#) provides additional information regarding the Federal EEO complaint process.

In addition, employees or applicants who believe they have been discriminated against may, as appropriate and if applicable, file a grievance under an applicable collective bargaining agreement; file an appeal with the U.S. Merit Systems Protection Board (MSPB); or file a complaint with the U.S. Office of Special Counsel (OSC). For specific information on filing procedures, employees and applicants may visit <http://www.mspb.gov> and <http://www.osc.gov>.

### **Questions**

For questions about this Guidance, contact OPM's Office of Diversity, Equity, Inclusion and Accessibility at [ODEIA@opm.gov](mailto:ODEIA@opm.gov). Managers, supervisors, and employees may also consult with their agency's human resources, equal employment opportunity, and diversity, equity, inclusion, and accessibility offices, or their offices of general counsel, regarding individual situations.