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## **New MSPB Report Examines Sexual Orientation and the Federal Workplace**

The Merit Systems Protection Board (MSPB) has released a new report, *Sexual Orientation and the Federal Workplace: Policy and Perception*. The report examines Federal employee perceptions of workplace treatment based on sexual orientation and reviews the evolution and current state of the protections from sexual orientation discrimination in Federal employment.

Since 1980, the Office of Personnel Management (OPM) has interpreted the tenth Prohibited Personnel Practice (5 U.S.C. § 2302(b)(10)), which bars discrimination in Federal personnel actions based on conduct that does not adversely affect job performance, to prohibit sexual orientation discrimination. As this prohibition has neither been specifically expressed in statute nor affirmed in judicial decision, it has been subject to alternate interpretations. Executive Order 13087 (1998) prohibited sexual orientation discrimination in Federal employment but provided no enforceable rights or remedies for employees who allege they are the victims of such discrimination.

As MSPB Chairman Susan Tsui Grundmann noted, "Any confusion surrounding the longstanding policy prohibiting sexual orientation discrimination in the Federal workplace would be resolved by legislation to make that prohibition explicit." According to Chairman Grundmann, "Legislation could also grant Federal employees who allege they are the victims of sexual orientation discrimination access to the same remedies as those who allege discrimination on other bases."

Only about one percent of Federal employees responding to a 2010 MSPB survey believed they had been discriminated against based on their sexual orientation. An additional three percent perceived sexual orientation discrimination had occurred in their workplace but that they were not the targets of the discrimination. By comparison, about three percent of Federal employees

surveyed perceived that discrimination had occurred in their workplace based on national origin and marital status or that violations of veteran's preference had occurred.

A 2012 OPM survey found that lesbian, gay, bisexual, and transgender (LGBT) Federal employee perceptions of the workplace were generally less positive than other employees. MSPB analysis of that survey data found that in some agencies, for at least some workplace issues, LGBT employee perceptions were as positive about the workplace as other employees. This suggests that agencies may be able to create more inclusive cultures, resulting in a more positive atmosphere in the workplace.

Among the report recommendations are that agencies review their management programs, policies, and procedures to ensure that they are fair and inclusive to all employees, and that agencies better communicate the prohibition on sexual orientation discrimination to employees.

MSPB is an independent, quasi-judicial agency that protects the Merit System Principles and promotes an effective Federal workforce free of Prohibited Personnel Practices. MSPB adjudicates appeals, conducts studies of merit systems, and reviews the rules, regulations, and significant actions of the Office of Personnel Management. MSPB studies are available on the web at [www.mspb.gov/studies](http://www.mspb.gov/studies).