

Sexual Orientation and the Federal Workplace: Policy and Perception

Research Highlights



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Gay and lesbian individuals were once deemed unsuitable for Federal employment. In 1975 this policy was changed, and Federal employment policies have continued to evolve since that time. In 1980 the Office of Personnel Management (OPM) interpreted the newly-enacted tenth Prohibited Personnel Practice (PPP), which prohibits discrimination based on conduct that does not adversely affect job performance, to also prohibit sexual orientation discrimination. This interpretation means that Federal employees (or applicants for Federal employment) who believe they have been discriminated against based on their sexual orientation can file a complaint with the Office of Special Counsel (OSC), which determines if such allegations warrant further inquiry.

Executive Order 13087 (1998) reaffirmed the policy of non-discrimination based on sexual orientation in Federal employment. It could not, however, establish any additional rights or remedies for individuals alleging sexual orientation discrimination, such as the ability to proceed before the Equal Employment Opportunity Commission (as employees may who allege discrimination on other bases)—that right can only be granted by Congressional action. As the prohibition against sexual orientation discrimination has never been expressly stated in statute nor affirmed in judicial decision, the view that the tenth PPP prohibits sexual orientation discrimination, although generally accepted, has been subject to alternate interpretation. For example, in 2004, the Special Counsel determined that the tenth PPP did not extend to sexual orientation discrimination.

There are encouraging signs that the history of sexual orientation discrimination in Federal employment is being overcome. For example, lesbian, gay, bisexual, and transgender (LGBT) employees appear to be represented in the supervisory, managerial, and executive ranks at the same proportion as they are in the overall Federal workforce. In addition, according to the Merit System Protection Board's (MSPB) Merit Principles Survey 2010, relatively few Federal employees believed that sexual orientation discrimination occurred in their work unit—a similar percentage as believe certain other PPPs occur (see table).

In the past two years, an official in my work unit has...

Discriminated in favor or against someone in a personnel action based upon national origin	3.4%
Discriminated in favor or against someone in a personnel action based upon sexual orientation	3.2%
Knowingly violated a lawful form of veteran's preference or veteran's protection laws	3.1%
Discriminated in favor or against someone in a personnel action based upon marital status	2.5%

...but I was not personally affected by it

OPM has previously reported that, according to 2012 Federal Employee Viewpoint Survey (FEVS) results, LGBT Federal employee perceptions of the workplace are generally less positive than those of other employees. Further MSPB analysis of the FEVS data revealed that, in some agencies for at least some issues (including agency leadership, work environment, and training), LGBT employee perceptions were as positive about the workplace as those of their heterosexual colleagues. This suggests that agencies may be able to create more inclusive cultures, resulting in a more positive atmosphere in the workplace.

For the full report, including detailed recommendations, please visit www.mspb.gov/studies.