



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

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Bureau of Prisons Anti-Discrimination Policy

/s/

Approved: Charles E. Samuels, Jr.
Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

It is the Bureau of Prisons' (BOP) policy to ensure that every employee works in an environment free of discrimination or harassment of any kind. All employment decisions involving staff and applicants will be made exclusively on the basis of job-related criteria. Discrimination of any kind will not be tolerated; staff who are found to be responsible will be subject to discipline per the Program Statement **Standards of Employee Conduct**.

This policy provides a clear statement of support for a positive and equitable workplace for all staff. The obligations and responsibility of the agency and staff are controlled by statute, case law, Federal regulations, and decisions from the Equal Employment Opportunity (EEO) Commission. Staff or applicants who believe they have been subjected to discrimination and wish to pursue the EEO process for redress must contact an EEO counselor within 45 calendar days of the alleged discriminatory act. (Refer to the Program Statement **Discrimination and Retaliation Complaints Processing** for further information.)

All employees are responsible for treating fellow employees with dignity and respect. In addition, they should neither practice discriminatory behavior nor condone it in others.

It is the policy of the BOP to provide, ensure, and promote equal opportunity in employment for all persons on the basis of merit. Management at all levels will take effective actions to eliminate any internal policy, practice, or procedure that results in discrimination on the basis of race, color, sex, religion, national origin, age, physical or mental disability, genetic information, equal pay, pregnancy, retaliation, sexual orientation, gender identity, or status as a parent.

Program Objectives. The expected results of this program are:

To ensure all staff and applicants are free from discrimination, harassment, and retaliation of any kind with regard to employment in the BOP.

Notification of this policy will be given to each employee through bulletin board postings and Sallyport.

2. ACTION REQUIRED

Each Chief Executive Officer (CEO) (Regional Director, Assistant Director, Warden, Regional Reentry Manager [RRM], Staff Training Center Director) will ensure a diverse work environment free of discrimination based on race, color, sex, religion, national origin, age, physical or mental disability, genetic information, equal pay, pregnancy, retaliation, sexual orientation, gender identity, or status as a parent, and of all forms of unlawful harassment. Management and supervisory staff will work toward an environment that is free of discrimination and retaliation by neither practicing discrimination nor tolerating discriminatory behavior.

3. DISTRIBUTION

BOP CEOs will ensure that each current and new employee in their organizational units have access to this Program Statement.

4. AGENCY ACA ACCREDITATION PROVISIONS

(See the Program Statement **Directives Management Manual**, Sections 2.5 and 10.3)

- Administration of Correctional Agencies 2nd Edition: 1C-09, 1C-12.
- Adult Local Detention Facilities, 3rd Edition: 1C-07.
- Adult Correctional Institutions, 4th Edition: 4-4053, 4-4054, 4-4055, 4-4056, 4-4057.

5. BASES FOR DISCRIMINATION

A. Age Discrimination

The Age Discrimination in Employment Act (ADEA) forbids employment discrimination against people who are age 40 or older. The BOP shall not discriminate against an applicant or employee, who is of the age of 40 or older, because of his/her age.

B. Disability Discrimination

1. Complaints Involving Employment Issues by Staff or Applicants. Discrimination based on disability is prohibited by the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended in 2008. Management must make reasonable accommodation to the known physical or mental limitations of qualified applicants or employees with disabilities, unless the accommodation would impose an undue hardship upon the BOP. Qualified persons with disabilities are those who, with or without accommodation, can perform the essential functions of the job.

The BOP adopts the Department of Justice's "Manual and Procedures for Providing Reasonable Accommodations," issued October 17, 2002, available at: <http://www.justice.gov/jmd/eeos/ddaccomprocfinal081502.htm>.

2. Complaints Involving Programs or Activities Conducted by the Department of Justice. Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of a physical or mental disability in **all** programs or activities conducted by Executive Branch agencies, including the BOP. Thus, no qualified disabled person will, on the basis of his/her disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity the BOP conducts.

The BOP will make available to employees, applicants, inmates, visitors, other participants in or beneficiaries of the BOP's programs, and other interested persons information regarding the provisions of 28 CFR Part 39, which prohibit discrimination because of disability in programs or activities the BOP conducts.

No qualified disabled individual will be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity the BOP conducts, because the BOP's facilities are inaccessible to or unusable by disabled persons. Furthermore, the BOP will operate each program or activity at existing facilities, when viewed in their

entirety, so that the programs or activities are readily accessible to and usable by disabled individuals.

The BOP will process complaints alleging violations of Section 504 with respect to employment according to procedures established by the EEOC in 29 CFR part 1614 pursuant to Section 501 of the Rehabilitation Act of 1973.

C. Equal Pay/Compensation Discrimination

The Equal Pay Act (EPA) requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether jobs are substantially equal. All forms of pay are covered by this law. If there is an inequality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay.

An individual alleging a violation of the EPA may go directly to court and is not required to file an EEOC complaint beforehand. The time limit for filing an EPA complaint with the EEOC and the time limit for going to court are the same: within two years of the alleged unlawful compensation practice or, in the case of a willful violation, within three years. The filing of an EEOC complaint under the EPA does not extend the time frame for going to court.

D. Gender Identity Discrimination

Discrimination against an individual because that person is transgender is discrimination because of sex in violation of Title VII. This is also known as gender identity discrimination. In addition, lesbian, gay, and bisexual individuals may bring sex discrimination claims. These may include, for example, allegations of sexual harassment or other kinds of sex discrimination, such as adverse actions taken because of the person's non-conformance with sex stereotypes.

The BOP shall not discriminate against applicants or employees on the basis of their gender identity.

E. Genetic Information Discrimination

Under Title II of the Genetic Information Notification Act (GINA), it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers and other entities covered by Title II (employment agencies, labor organizations, and joint labor-management training and apprenticeship programs – referred to as “covered entities”) from requesting, requiring, or purchasing genetic information, and strictly limits the disclosure of genetic information.

The EEOC enforces Title II of GINA (dealing with genetic discrimination in employment). The Departments of Labor, Health and Human Services, and Treasury have responsibility for issuing regulations for Title I of GINA, which addresses the use of genetic information in health insurance.

1. Definition of “Genetic Information.” Genetic information includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about the manifestation of a disease or disorder in an individual’s family members (i.e., family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. Genetic information also includes:

- An individual’s request for, or receipt of, genetic services.
- Participation in clinical research that includes genetic services by the individual or a family member of the individual.
- Genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual.
- Genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

2. Discrimination Because of Genetic Information. The law forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. The BOP may never use genetic information to make an employment decision because genetic information is not relevant to an individual’s current ability to work.

3. Rules Against Acquiring Genetic Information. Except for the six narrow exceptions noted in GINA, it is unlawful for the BOP to obtain genetic information. (See <http://www.eeoc.gov/laws/types/genetic.cfm>)

4. Confidentiality of Genetic Information. It is also unlawful for the BOP to disclose genetic information about applicants or current or former employees. The BOP must keep genetic information confidential and in a separate medical file. (Genetic information may be kept in the same file as other medical information, in compliance with federal law.) There are limited exceptions to this non-disclosure rule, such as exceptions that provide for the disclosure of relevant genetic information to government officials investigating compliance with Title II of GINA and for disclosures made pursuant to a court order.

F. National Origin Discrimination

The BOP shall not discriminate against applicants or employees with regards to any aspect of employment because they are from a particular country or part of the world, because of

ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).

The BOP shall not discriminate against applicants or employees because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group.

G. Parental Status Discrimination

The BOP must not discriminate against an applicant or employee because of his/her parental status. Executive Order 13152, also amending Executive Order 11478, was signed on May 2, 2000, to provide a uniform policy for the Federal Government to prohibit discrimination based on an individual's status as a parent.

“Status as a parent” refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

- A biological parent;
- An adoptive parent;
- A foster parent;
- A stepparent;
- A custodian of a legal ward; or
- In loco parentis over such an individual, or actively seeking legal custody or adoption of such an individual.

H. Pregnancy Discrimination

The BOP shall not discriminate against a female applicant or employee unfavorably in any aspect of employment because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, in accordance with the Pregnancy Discrimination Act of 1978.

I. Race/Color Discrimination

The BOP shall not discriminate against an applicant or employee in any aspect of employment because he/she is of a certain race, or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features), or because of skin color complexion.

The BOP shall not discriminate against an applicant or employee because the person is married to (or associated with) a person of a certain race or color or because of a person's connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain color.

J. Religious Discrimination

The BOP shall not discriminate against an applicant or employee unfavorably in any aspect of employment because of his/her religious beliefs. The law protects not only people who belong to traditional organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but others who have sincerely held religious, ethical, or moral beliefs.

The BOP shall not discriminate against an applicant or employee because that person is married to (or associated with) an individual of a particular religion or because of his/her connection with a religious organization or group.

BOP supervisors and management officials must reasonably accommodate an employee's religious beliefs and practices, unless doing so would cause more than a minimal burden on the operations of the agency. Examples of common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

K. Retaliation

BOP supervisors and management officials must not retaliate against applicants or employees in any aspect of employment because they filed an EEO complaint, because they complained to the BOP about discrimination on the job, or because they otherwise participated in the EEO process.

L. Sex-Based Discrimination

The BOP shall not discriminate against an applicant or employee unfavorably in any aspect of employment because of that person's sex or his/her connection with an organization or group that is generally associated with people of a certain sex.

It is unlawful to harass a person because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both the victim and the harasser can be either a woman or a man, and the victim and harasser can be of the same sex. (The harasser can also be a non-BOP staff member or an inmate.) Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision.

Please refer to the Program Statement **Bureau of Prisons Anti-Harassment Policy**.

M. Sexual Orientation Discrimination

The BOP shall not discriminate against an applicant or employee because of his/her sexual orientation. Executive Order 13087, amending Executive Order 11478, was signed on May 28, 1998, to provide a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation.

Sexual orientation refers to an individual's actual or perceived sexual preferences, such as homosexuality, bisexuality, or heterosexuality.

REFERENCES

Program Statements

P1210.24	Internal Affairs, Office of (5/20/03)
P1221.66	Directives Management Manual (7/21/98)
P1330.18	Administrative Remedy Program (1/6/14)
P1601.04	Workers' Compensation Program (9/11/02)
P3000.03	Human Resource Management Manual (12/19/07)
P3420.11	Standards of Employee Conduct (12/6/13)
P3713.21	Affirmative Action and Diversity Management Program (5/16/01)
P3713.24	Discrimination and Retaliation Complaints Processing (6/5/14)
P3713.26	Bureau of Prisons Anti-Harassment Policy (6/5/14)
P3730.05	Workplace Violence Prevention, Staff (3/23/04)
P3792.07	Employee Assistance Program (EAP) (12/30/06)

Other Policy

5 U.S.C. § 552a(b)(1)

Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e et seq.)

Genetic Information and Notification Act (GINA) of 2008

Americans with Disabilities Act Amendments

Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 621 et seq.)

Rehabilitation Act of 1973, as amended (29 U.S.C. § 791 et seq.)

Fair Labor Standards Amendments of 1974 and 1978
Civil Service Reform Act of 1978
Executive Order 11478, as amended
Executive Order 12731, as amended
Executive Order 13087, as amended
Executive Order 12067, as amended
Executive Order 12106, as amended
Executive Order 13152, as amended
EEOC Management Directive 110
EEOC Management Directive 715
Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act), Pub. L. 107-174
Office of Personnel Management Handbook: Addressing Sexual Orientation Discrimination in the Federal Government
Title 5 CFR Part 720; and Part 1201, Subpart D
Title 28 CFR Part 39
Title 28 CFR Part 42, Subpart A
Title 29 CFR Part 33
Title 29 CFR Parts 1604, 1605, 1606, 1614, 1625, and 1626
Master Agreement between the Federal Bureau of Prisons and the Council of Prison Locals (March 9, 1998 – March 8, 2001)
Department of Justice Manual and Procedures for Providing Reasonable Accommodation
www.eeoc.gov

Records Retention

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport.