

## U.S. OFFICE OF PERSONNEL MANAGEMENT

## DIVERSITY &amp; INCLUSION REFERENCE MATERIALS

# Guidance Regarding Non-Discriminatory Practices in Federal Employment

**Policy and Purposes:** It is the policy of the Federal Government to treat all of its employees with dignity and respect and to provide a workplace that is free from discrimination, whether that discrimination is based on race, color, religion, sex, national origin, disability, political affiliation, marital status, membership in an employee organization, age, sexual orientation, gender identity, pregnancy, or other non-merit factors. Agencies should review their policies to ensure that they provide a workplace that embraces diversity and inclusion and should update policies, where necessary, to be consistent with [the plain meaning of Title VII of the Civil Rights Act of 1964](#).

The purpose of this memorandum is to provide guidance to address some of the common questions that agencies have raised with the U.S. Office of Personnel Management (OPM) regarding furthering diversity in the Federal workplace. Because the guidance is general in nature out of necessity, managers, supervisors, and employees should consult with their human resources offices and their counsel as to individual situations. They are also free to consult with OPM more generally.

**Confidentiality and Privacy:** Confidentiality and privacy have numerous implications as it related to a Federal employee's records. Protecting employees' privacy rights is critical to contributing to a diverse and inclusive workforce. Agencies should take all appropriate actions so employees feel confident their personal information will be appropriately protected.

An employee's medical treatment should be treated with as much sensitivity and confidentiality as any other private or highly personal life experience of an employee. Medical information received about individual employees is protected under the Privacy Act (5 U.S.C. 552a).

Employing agencies and their managers and supervisors should be sensitive to these concerns about the privacy of employees' medical information and should advise employees to respect the privacy and dignity of all employees. Other employees should be provided information about an employee's medical history only if they have a need to know the information in the performance of their duties, in accordance with the Privacy Act, 552a(b)(1). Personal information about the employee should not be released to anyone without a need to know unless the employee has provided prior written consent to having the information disclosed.

**Recordkeeping:** Consistent with the Privacy Act, the records in the employee's Official Personnel Folder (OPF) and other employee records (pay accounts, training records, benefits documents, and so on) should initially reflect the legal name and sex of the individual, consistent with the proof of identity provided at the time of completing the onboarding process. Subsequently, an employee may seek to update the employee's OPF consistent with any changes in legal documentation. Changes in an employee's OPF should be consistent with 5 U.S.C 552(a)(d) and [Chapter 4 How to Reconstruct a Personnel Folder](#) .

**Dress and Appearance:** Agencies are encouraged to enact policies that lead to efficient and effective mission delivery. Policies should require employees to follow dress and appearance rules consistent with the professional standards of their occupation.

**Workplace assignments and duties:** In some workplaces, specific assignments or duties are appropriately differentiated by sex. In those instances for which sex is a bona fide occupation qualification, individuals should be hired for, and stationed for assignments and duties, in accordance with the individual's biological sex, consistent with the plain meaning of Title VII of the Civil Rights Act of 1964 as

articulated by the Attorney General [memo of October 4, 2017](#). The Federal government is best served by maintaining a diverse and inclusive workforce of qualified individuals who wish to dedicate their lives to serving the American public. Accordingly, although an individual may not meet the requirements for a particular position for which sex is a bona fide occupation qualification, such individuals should be encouraged to apply for alternative positions within the Federal government for which they are qualified. Additionally, agencies may consider altering occupation duties, while still effectively carrying out the agency mission, to further support a diverse and inclusive workforce.

**Sick and medical leave:** Employees receiving medical treatment may use sick leave under applicable regulations. Employees who are qualified under the Family Medical Leave Act also may be entitled to take medical leave in accordance with applicable laws.

**Hiring process:** During the hiring process, hiring managers and supervisors should conduct themselves in a professional manner, and promote the Federal government's policy of a diverse and inclusive workforce.

Hiring managers should carry out interviews free from discrimination, whether that discrimination is based on race, color, religion, sex, national origin, disability, political affiliation, marital status, membership in an employee organization, age, sexual orientation, gender identity, pregnancy, or other non-merit factors, in seeking to hire individuals dedicated to serving the American public. In these processes, hiring managers should be consistent in applying the definition of sex, where applicable as a bona fide occupation qualification, consistent with the plain meaning of Title VII of the Civil Rights Act of 1964 as articulated by the Attorney General [memo of October 4, 2017](#).

**Insurance Benefits:** Federal employees are eligible to elect FEHB coverage, unless their position is excluded by law or regulation. Agencies apply these rules and determine employees' eligibility. Specific information on eligibility can be found [on OPM's website](#).

**Specific Questions:** For further guidance on these issues, contact the Diversity Program Manager, Office of Diversity and Inclusion, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, at (202) 606-0020.