



Supplemental Resource: Equal Employment Opportunity (EEO), Diversity and Inclusion (D&I), and the No FEAR Act of 2002

U.S. Department of the Interior



What is the No FEAR Act?

- The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) became effective on October 1, 2003. The primary purpose of the No FEAR Act is to improve agency accountability for compliance with antidiscrimination and whistleblower protection laws.
- The Elijah E. Cummings Federal Antidiscrimination Act of 2020 amended the No FEAR Act, increasing agency accountability by adding/revising tracking and reporting requirements for compliance with antidiscrimination and whistleblower protection laws.



Equity, Diversity and Inclusion



ODICR FY21 Strategic Priorities

- Implementation of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*
- Implementation of Executive Order 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*
- Developing allies for equity, diversity and inclusion (EDI) throughout the Department



Executive Order 13985

On January 20, 2021, President Biden issued an *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*.

<https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>



Executive Order 13985

“[t]he Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”





Executive Order 13985

“The head of each agency, or designee, shall, in consultation with the Director of OMB, select certain of the agency's programs and policies for a review that will assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available pursuant to those policies and programs. The head of each agency, or designee, shall conduct such review and within 200 days of the date of this order provide a report to the Assistant to the President for Domestic Policy (APDP) reflecting findings”



Executive Order 13988

On January 20, 2021, President Biden issued an *Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*.

<https://www.federalregister.gov/documents/2021/01/25/2021-01761/preventing-and-combating-discrimination-on-the-basis-of-gender-identity-or-sexual-orientation>



Executive Order 13988

“It is the policy of my Administration to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation. It is also the policy of my Administration to address overlapping forms of discrimination.”



Executive Order 13988

“Within 100 days of the date of this order, the head of each agency shall develop, in consultation with the Attorney General, as appropriate, a plan to carry out actions that the agency has identified . . . as appropriate and consistent with applicable law.”



DOI EEO and D&I Strategic Plans

- ODICR is developing Strategic Plans for implementation Department-wide in FY21.
- Both strategic plans outline the Department's efforts to advance equity, diversity, and inclusion (EDI).



Building Allies

An ally is someone who is not a member of an underrepresented group but who takes action to support that group. Members of a particular underrepresented group can (and should) be allies to members of other underrepresented groups.



TED Talk: 3 ways to be a better ally in the workplace, Melinda Epler, Oct. 25, 2018, <https://doimspp.sharepoint.com/sites/ODICR/SitePages/Be-An-Ally.aspx>



How to be an Ally

- Amplify: support good ideas from members of underrepresented groups, and elevate their perspectives
- Listen: be available and have empathy for the experiences of others
- Inform Yourself: research a variety of primary sources by members of underrepresented groups

ODICR SharePoint, “Be an Ally”

<https://doimspp.sharepoint.com/sites/ODICR/SitePages/Be-An-Ally.aspx>



How to be an Ally

- Sponsor: recommend members of underrepresented groups for opportunities
- Advocate: support inclusive policies and practices in your organization
- Be an Upstander: speak up if you witness offensive or unwelcoming behavior or speech, and check in with people who may be directly affected

ODICR SharePoint, “Be an Ally”

<https://doimspp.sharepoint.com/sites/ODICR/SitePages/Be-An-Ally.aspx>



Nominating EDI Champions

Equity, Diversity and Inclusion (EDI) Champions exhibit excellence in promoting, supporting or advocating for equity, diversity and inclusion in the workplace. An EDI Champion:

1. Influences Others
2. Is a Role Model
3. Continually Learns
4. Cultivates Diverse Teams
5. Innovates and is Proactive
6. Holds Themselves and Others Accountable
7. Exhibits External Leadership Involvement

ODICR SharePoint, “EDI Champions”

<https://doimspp.sharepoint.com/sites/ODICR/SitePages/EDI-Champions.aspx>



Take the EDI Pledge

You have the power to demonstrate commitment to equity, diversity and inclusion 365 days a year.

1. TAKE THE PLEDGE
2. Empower your team to call a flag on others (even those above them in the supervisory chain) who violate the spirit of the pledge in a respectful and dignified way.
3. If you are a manager or supervisor, set up a consult with the ODICR Leadership Team, to discuss :
 - Management tools for effectively managing in a diverse workforce
 - Employment strategies and tailored training solutions to foster an EDI work environment

ODICR SharePoint, “Take the Pledge”

<https://doimspp.sharepoint.com/sites/ODICR/SitePages/Take-the-Pledge.aspx>



Employment Discrimination



Employment Discrimination

Federal laws protect you against employment discrimination when it involves:

- Unfair treatment because of your race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.
- Harassment by managers, co-workers, or others in your workplace, because of your race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.
- Denial of a reasonable workplace accommodation that you need because of your religious beliefs or disability.
- Retaliation because you complained about job discrimination or assisted with a job discrimination investigation or lawsuit.



Harassment



Unlawful Harassment

Harassment is a form of employment discrimination defined as:

1. Unwelcome conduct that is
2. Based on a protected class, such as race, color, religion, sex, gender identity, sexual orientation, national origin, age, disability, or genetic information, and which
3. Results in a tangible employment action, or is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.



Sexual Harassment

Harassment can be nonsexual (and based on any protected class) or sexual.

- Sex-based harassment can include disparaging remarks about someone's sex, gender identity, sexual orientation, or transgender status.
- Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.



Unlawful Harassment

- Two types of harassment:
 1. Tangible Employment Action
 2. Hostile Work Environment



Tangible Employment Action

- Tangible employment action: a significant change in employment status enacted by a supervisor, such as:
 - hiring and firing;
 - promotion and failure to promote;
 - demotion;
 - undesirable reassignment;
 - a decision causing a significant change in benefits;
 - compensation decisions; and/or
 - work assignments
- Agency is automatically liable for harassment that results in a tangible employment action



Hostile Work Environment

- Conduct must be sufficiently severe or pervasive that a reasonable person would perceive the working environment as hostile, intimidating, or abusive
- Includes conduct in and out of the workplace
- Protections extend to conduct by supervisors, supervisors outside the chain of command, agency contractors, co-workers, or non-employees



Unwelcome Conduct

- Unwelcome conduct can be physical, verbal, or visual. Examples include, but are not limited to:
 - unnecessary touching or brushing up against an individual;
 - offensive jokes;
 - slurs/epithets;
 - insults;
 - threats;
 - ridicule;
 - name calling; and
 - offensive objects or pictures.





Severe or Pervasive

- Sliding scale
- Some conduct is so severe that even one instance is enough to create a hostile work environment
 - Physical assault
 - Egregious slurs
- If conduct is not severe, it must be pervasive (i.e. occur very frequently) to create a hostile work environment



DOI Personnel Bulletin 18-01

Policy: PB 18-01 is the Department's Policy on Prevention and Elimination of Harassing Conduct

Purpose: The policy's purpose is to provide a work environment free from harassment by:

- ensuring that appropriate officials are notified of and have the opportunity to promptly correct harassing conduct;
- clearly communicating that the Department will not tolerate harassing behavior; and
- requiring that management address harassing conduct and hold employees accountable at the earliest possible stage, before the conduct rises to the level of unlawful harassment within the meaning of anti-discrimination law by becoming severe or pervasive or resulting in a tangible employment action.

<https://www.doi.gov/employees/anti-harassment>

https://www.doi.gov/sites/doi.gov/files/elips/documents/prevention_and_elimination_of_harassing_conduct_1.pdf



EEO and PB 18-01



Both processes can run simultaneously but serve different purposes



EEO process is intended to provide complainants with remedies



PB 18-01 process is intended to stop further harassing conduct immediately



Reporting under PB 18-01 does not automatically begin the EEO process; you still must contact an EEO counselor within 45 days



Retaliation



Retaliation

- Federal EEO laws prohibit retaliation against job applicants or employees for asserting their right to be free from employment discrimination, including harassment.
- Asserting these EEO rights is called "protected EEO activity."



Retaliation

- Illegal to fire, demote, harass, or otherwise retaliate against applicants or employees because they have engaged in protected EEO activity.
- But: engaging in protected EEO activity doesn't mean you can't still be disciplined for legitimate conduct or performance issues
- Retaliation is the most common basis for EEO complaints across the federal government, including at DOI

EEOC Retaliation: <https://www.eeoc.gov/retaliation>

Protected EEO Activity

- Opposition: any behavior opposing conduct reasonably believed to be discriminatory, including:
 - Supporting a coworker who files a complaint
 - Speaking up in a meeting about discriminatory practices
- Participation: participating in the EEO process in any way, including as a complainant or witness, or by requesting a reasonable accommodation





Chilling Conduct

Per se retaliation: behaviors which are reasonably likely to have a chilling effect or deter individuals from engaging in protected EEO activity

- Can include conduct that wouldn't otherwise be actionable under EEO laws
 - E.g., informal verbal reprimands
- Does not have to be negative or hostile
 - “You should have settled your differences instead of filing an EEO complaint.” *Ashby v. Dep't of the Treasury*, EEOC Appeal No. 0120090364 (Feb. 27, 2012).
- Can be implied, rather than explicit
 - “What goes around comes around.” *Vincent v. USPS*, EEOC Appeal No. 012007297 (Dec. 16, 2010).



Reporting

If you believe you have been subjected to discrimination, including unlawful harassment or retaliation, **you should not delay** in contacting ODICR or your Bureau EEO Office.

What: Initiate EEO contact

When: Within **45 days** from the date the unlawful harassment occurred

How: Contact your [Bureau EEO Office](#)

To learn more about your rights and responsibilities, visit <https://doimsp.sharepoint.com/sites/ODICR>



If you have questions or if you would like more information, please visit the ODICR SharePoint site at:

<https://doimspp.sharepoint.com/sites/ODICR>
