**What is the No FEAR Act?**

On May 15, 2002, Congress enacted the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” which is now known as the No FEAR Act. The No FEAR Act, effective October 1, 2003, requires federal agencies to provide their employees with training and notification regarding their rights and remedies available under one or more of the following statutes:

* Title VII of the Civil Rights Act of 1964 (Title VII);
* The Pregnancy Discrimination Act;
* The Equal Pay Act of 1963 (EPA);
* The Age Discrimination in Employment Act of 1967 (ADEA);
* Title I of the Americans with Disabilities Act of 1990 (ADA);
* The Americans with Disabilities Act Amendments Act of 2008 (ADAAA);
* Sections 501 and 505 of the Rehabilitation Act of 1973;
* The Genetic Information Nondiscrimination Act of 2008 (GINA); and
* The Lilly Ledbetter Fair Pay Act of 2009.

The Act also requires federal agencies to:

* Be accountable for violations of antidiscrimination and whistleblower protection laws;
* Post quarterly on each respective agency’s public website statistical data relating to federal sector equal employment opportunity complaints filed with the agency;
* Report annually to Congress how many discrimination and whistleblower cases that were brought against the agency, what happened in those cases, and whether any employees were disciplined; and
* Reimburse the Treasury Judgment Fund for payments made in Federal District Court cases involving violations of discrimination and whistleblower laws.
* **Basis of the No FEAR Act (cont)**
* As a federal employee or applicant for federal employment, you are protected from illegal discrimination in employment matters on the basis of your race, color, religion (including reasonable accommodation of religious beliefs or practices), sex (including pregnancy, childbirth and related medical conditions, transgender status, gender identity, and sex stereotyping), national origin (including ethnicity, accent, and use of a language other than English), age, disability (including reasonable accommodation of physical or mental disability), genetic information, parental status, sexual orientation, marital status, political affiliation or belief, membership in a protected group or association with members of a protected group, protected EEO activity or any other prohibited factor.
* Illegal discrimination occurs when an employee or applicant is treated differently than another employee or applicant and treatment is based on race, color, religion (including reasonable accommodation of religious beliefs or practices), sex (including pregnancy, childbirth and related medical conditions, transgender status, gender identity, and sex stereotyping), national origin (including ethnicity, accent, and use of a language other than English), age, disability (including reasonable accommodation of physical or mental disability), genetic information, parental status, sexual orientation, marital status, political affiliation or belief, membership in a protected group or association with members of a protected group, protected EEO activity or any other prohibited factor.

It is also illegal to discriminate against an employee or applicant based on association with someone of a particular race, color, religion (including reasonable accommodation of religious beliefs or practices), sex (including pregnancy, childbirth and related medical conditions, transgender status, gender identity, and sex stereotyping), national origin (including ethnicity, accent, and use of a language other than English), age, disability (including reasonable accommodation of physical or mental disability), genetic information, parental status, sexual orientation, marital status, political affiliation or belief, membership in a protected group or association with membership of a protected group, protected EEO activity or any other prohibited factor.

# Rights under Antidiscrimination Laws

The federal antidiscrimination laws protect an employee or applicant from discrimination concerning the terms and conditions of employment.

Below is a list of some of the employment matters covered:

* Hiring, promotion, pay, leave, awards, assignments, training, suspensions, and terminations; and
* Denial of telework; and
* Requests for reasonable accommodation for religious reasons, or for reasons based on disability.

# The Equal Employment Opportunity Process

* Employees of or applicants for employment with the Department of Labor who believe that they have been the victim of unlawful discrimination or adverse treatment on the basis of race, color, religion (including reasonable accommodation of religious beliefs or practices), sex (including pregnancy, childbirth and related medical conditions, transgender status, gender identity, and sex stereotyping), national origin (including ethnicity, accent, and use of a language other than English), age, disability (including reasonable accommodation of physical or mental disability), genetic information, parental status, sexual orientation, marital status, political affiliation or belief, membership in a protected group or association with members of a protected group, protected EEO activity or any other prohibited factor, must contact an Equal Employment Opportunity (EEO) Counselor or the Civil Rights Center **within 45 calendar days of the alleged discriminatory action**, or, in the case of a personnel action, **within 45 calendar days of the effective date of action.**
* Employees are entitled to a reasonable amount of official time to prepare and present their complaints, including official time to meet with an EEO Counselor, an EEO investigator, or to participate in any hearings or other proceedings related to their complaints. For more information, select the applicable document on the CRC’s Hot Topics webpage at: <https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm>

# Use of Official Time

* The actual number of hours to which a complainant and their representative are entitled will vary, depending on the nature and complexity of the complaint and considering the mission of the agency and the agency’s need to have its employees available to perform their normal duties on a regular basis. The complainant and their supervisor should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant’s use of such time.
* For more information on use of official time, select the applicable document on the CRC's Hot Topics webpage at: <https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm>.

# EEO Counseling Process

* Counseling is the first step of the EEO complaint process where vital information concerning the complaint process is provided, basic information is gathered, and attempts to resolve the complaint are made.
* The Department’s EEO Counselors are facilitators and provide information regarding the Department’s EEO process. The counselors act as neutral third parties. They do not represent the employee or the Department. For a list of EEO Counselor’s, see <https://www.dol.gov/oasam/programs/crc/counseling-mediation-staff.htm>.  The assigned counselor will offer an opportunity to use Alternative Dispute Resolution (ADR) to resolve the complaint.
* To contact an EEO Counselor, look for the EEO posters displayed in DOL workplaces, contact the Department’s Civil Rights Center at phone (202) 693-6500, (800) 877-8339, video relay (877) 709-5797 or see (<http://www.labornet.dol.gov/me/eeodiversity/eeo/Agency-EEO-Managers.htm>) for a listing of National Office & Regional EEO Counselors. For more information on the CRC, see [www.dol.gov/oasam/programs/crc/index.htm](http://www.dol.gov/oasam/programs/crc/index.htm).

# Following EEO Counseling

* If the complaint is not resolved during counseling, the aggrieved individual will be provided a Notice of Right to File a Formal Complaint. If an aggrieved individual wishes to proceed, a formal complaint must be filed within 15 calendar days from receipt of the Notice.

Employees covered by a collective bargaining agreement that permits allegations of discrimination may elect to proceed under the negotiated grievance procedure rather than filing a formal complaint of discrimination. **But, one cannot do both.**
* At the Department of Labor, any employee within the American Federation of Government Employees (AFGE), Local 12, or the National Union of Labor Investigators, Independent (NULI) bargaining units may file allegations of discrimination under the negotiated grievance procedures of their respective union. Employees within Local 12 or NULI must choose whether the allegations of discrimination will be processed under the negotiated grievance procedure or under the EEO complaint procedure. Election will be determined by whichever event comes first, the date of the grievance or the date of the formal complaint; please note that initiating EEO counseling does not constitute election.
* Employees represented by the National Council of Field Labor Locals (NCFLL) are specifically excluded from filing grievances alleging discrimination. In the event that an employee represented by the NCFLL files a grievance and an informal EEO complaint on the same matter, the grievance will be held in abeyance. If a formal EEO complaint is filed, the grievance will be terminated. However, in the event that the DOL dismisses that EEO complaint for reasons other than on merit, the NCFLL represented employee has 30 days from receipt of the dismissal to resurrect the grievance.

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* A complainant has the right to go directly to a court of competent jurisdiction on claims of sex-based wage discrimination under the Equal Pay Act. A complainant also has the right, after providing the Equal Employment Opportunity Commission (EEOC) with 30 days advance “notice of intent to sue” in connection with an allegation of age discrimination under the Age Discrimination in Employment Act of 1967 (ADEA), to file a civil action in United States District Court as an alternative to filing a complaint in the administrative process.

If the applicant or employee is alleging discrimination based on marital status or political affiliation, they may file a written complaint with the U.S. Office of Special Counsel (OSC). For more information, see <https://osc.gov/>.

# Unlawful Discrimination Based on Race and Color

* Everyone is protected from race and color discrimination, including persons of more than one race, whatever their race, color, or ethnicity. Race or color discrimination also means treating someone less favorably at work because of marriage or other association with someone of a particular race or color.

Race discrimination includes discrimination on the basis of ancestry or physical or cultural characteristics associated with a certain race, such as skin color, hair texture or styles, or certain facial features.

**Unlawful Discrimination Based on National Origin**

National origin discrimination means treating people less favorably because they come from a particular place,because of their ethnicity or accent, or because it is believed that they have a particular ethnic background.

It also means treating people less favorably at work because of marriage or other association with someone of a particular nationality.

National origin discrimination may also include language discrimination, including:

* **Accent Discrimination**
	+ An employer may not base a decision on an employee’s accent unless the accent materially interferes with job performance.
* **Language Fluency**
	+ A fluency requirement is only permissible if required for the effective performance of the position for which it is imposed.

**English-only Rules**

EEOC Regulation 29 C.F.R. § 1606.7(a) provides that a rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. Such a rule is presumed to violate Title VII. Therefore, a speak-English-only rule that applies to casual conversations between employees on break or not performing a job duty would be unlawful.

English-only rules must be adopted for nondiscriminatory reasons. A workplace English-only rule that is applied only at certain times may be adopted only under very limited circumstances that are justified by business necessity. Such a rule must be narrowly tailored to address the business necessity. Situations in which business necessity would justify an English-only rule include:

* For communications with customers, coworkers, or supervisors who only speak English;
* In emergencies or other situations in which employees must speak a common language to promote safety;
* For cooperative work assignments in which the English-only rule is needed to promote efficiency; and
* To enable a supervisor who only speaks English to monitor the performance of an employee whose job duties require communication in English with coworkers or customers.

For more information on English-only rules, select the applicable document on the CRC's Hot Topics webpage at <https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm>.

**Unlawful Discrimination Based on Religion and Religious Accommodation**

Employers may not treat employees or applicants more or less favorably because of their religious beliefs or practices - except to the extent a religious accommodation is warranted. Employees cannot be forced to participate - or not participate - in a religious activity as a condition of employment.

Discrimination based on religion within the meaning of Title VII could include, for example:

* not hiring an otherwise qualified applicant because he is a self-described evangelical Christian; and
* a Jewish supervisor denying a promotion to a qualified non-Jewish employee because the supervisor wishes to give a preference based on religion to a fellow Jewish employee.

**Unlawful Discrimination Based on Religion and Religious Accommodation**

Employers must reasonably accommodate employees whose sincerely held religious beliefs, practices, or observances conflict with work requirements unless doing so would impose an undue hardship on the employer. Undue hardship is defined as more than a minimal burden on the operations of the employer’s business.

A reasonable religious accommodation is any adjustment to the work environment that will allow an employee to practice their religion. An employer might accommodate an employee’s religious beliefs or practices by allowing: flexible scheduling, voluntary substitutions or swaps, job reassignments, lateral transfers, modification of grooming requirements, and other workplace practices, policies and/or procedures.
Requests for accommodation of a “religious” belief or practice could include, for example:

* a Catholic employee requesting a schedule change to attend church services on Good Friday; &
* a Muslim employee requesting an exception to a dress and grooming code to wear a headscarf, or a Hindu employee requesting an exception to wear a bindi (religious forehead marking);
* an atheist asking to be excused from a religious invocation; and
* an adherent to Native American spiritual beliefs seeking leave to attend a ritual ceremony.

For more information on religious accommodation, select the applicable document on the CRC's Hot Topics webpage at: [https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm.](https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm)

**Unlawful Discrimination Based on Sex/Gender**

It is unlawful to discriminate against any employee or applicant for employment because of sex/gender. Employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis of sex/gender are also prohibited.

Discrimination based on pregnancy and/or on an employee’s gender identity is also covered under the laws prohibiting sex/gender discrimination. Agencies may not make employment decisions about an employee’s work performance or enact special rules or procedures based on a stereotype or assumption concerning an employee’s pregnancy or gender identity.

**Sexual Harassment**

Sexual harassment is a form of unlawful sex or gender discrimination.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment.

Sexual harassment includes one or more unwelcome sexual advance, requests for sexual favors, or other unwelcome physical, verbal, or visual conduct of a sexual nature where:

1. Submission to, or rejection of, such conduct by an individual is used as a basis for career or employment decisions affecting that individual; or
2. Such conduct has the purpose or effect of unreasonably interfering with a reasonable employee's work performance or creates an intimidating, hostile, or offensive work environment.

**Equal Pay**

The **Equal Pay Act of 1963** requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. **Title VII of the Civil Rights Act of 1964** also prohibits compensation discrimination on the basis of sex, among other **The Lilly Ledbetter Fair Pay Act of 2009** contains a retroactivity provision that extends the time period for filing complaints of employment discrimination concerning compensation.

**Unlawful Discrimination Based on Pregnancy**

Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII.

* An employer cannot refuse to hire an individual because of pregnancy, because of a pregnancy-related condition, or because of the prejudices of co-workers, clients, or customers.
* Agencies may not make an employment decision about an employee's work performance based on a stereotype or assumption concerning the employee's pregnancy.
* An agency may not terminate, deny assignments or deny promotions to a pregnant employee because of pregnancy or childbirth.

**Unlawful Discrimination Based on Sex/Gender, Pregnancy, Caregiving Responsibilities**

Title VII prohibits employment decisions that discriminate against employees with caregiving responsibilities, which includes child care, if the decisions are based on sex or another protected characteristic. Agencies should avoid reliance on common stereotypes or biases about caregivers that may result in unlawful conduct, including:

* Assuming that female employees’ caregiving responsibilities will interfere with their ability to succeed in a fast-paced environment; &
* Assuming that female employees who work part-time or take advantage of flexible work arrangements are less committed to their jobs than full-time employees;
* Assuming that female employees prefer, or should prefer, to spend time with their families rather than time at work.

**Unlawful Discrimination Based on Pregnancy**

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, if an employer requires its employees to submit doctors' statements concerning their inability to work before granting leave, the employer may require employees affected by pregnancy-related conditions to submit such statements before granting leave.

* If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as other temporarily disabled employees. For example, if the employer allows all other temporarily disabled employees to perform modified tasks or alternative assignments or to take leave without pay, the employer also must allow employees who are temporarily disabled due to pregnancy or related conditions to do the same.
* Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until she has given birth.
* An employer may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth.
* Employers must hold open jobs for pregnancy-related absences from the same length of time that they hold open jobs for employees on sick or disability leave.

For more information on pregnancy-related matters, select the applicable document on the CRC's Hot Topics webpage at: [http://www.dol.gov/oasam/programs/crc/2011-pregnancy-discrimination.htm](http://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm)

**Unlawful Discrimination Based on Sex/Gender, Gender Identity Discrimination**

The Department of Labor strives to be a model workplace, treating all employees with respect and taking proactive steps to create a welcoming environment. To that end, DOL policies and guidance promote equity and inclusion for all employees, including our LGBT coworkers.

***Who is protected from gender identity discrimination?***

* Gender identity discrimination can affect anyone. Policies barring gender identity discrimination not only protect those who openly identify as transgender or express their gender in a non-conforming way; they also protect all employees against “sex stereotyping” (e.g., women who some people think are “too masculine” or men who some people think are “too feminine”).
* DOL policies barring discrimination and harassment on the basis of sex protect employees and applicants for employment from being harassed, denied employment or promotion, or otherwise subjected to adverse treatment because they do not conform to societal gender expectations.

***What are my rights under DOL’s gender identity policies?***

Employees and applicants for employment have the right to experience a workplace free of discrimination, including harassment. If you believe that you have experienced discrimination, you should contact your agency Equal Employment Opportunity (EEO) Manager or the DOL Civil Rights Center (CRC), which is responsible for ensuring nondiscrimination within the Department and processing discrimination complaints. CRC may be reached by phone at (202) 693-6500 (voice) or (800) 877-8339 (Relay), or by e-mail CivilRightsCenter@dol.gov.

For more information, select applicable document on the CRC’s Hot Topics webpage at <https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm>

**Unlawful Discrimination Based on Age**

**The Age Discrimination in Employment Act of 1967 (ADEA)** protects individuals who are 40 years of age or older from employment discrimination based on age. The Act also protects older employees from adverse employment actions based on stereotypes or stigmas associated with age.

Under the ADEA it is unlawful to discriminate against any individual age 40 or older because of age with respect to any term, condition, or privilege of employment, including but not limited to:

* Recruitment
* Hiring
* Firing
* Promotion
* Layoff
* Compensation
* Benefit
* Job assignments
* Training

The ADEA permits federal agencies to favor older workers based on age, even when doing so adversely affects a younger worker who is 40 years of age or older.

For more information on age discrimination, select the applicable document on the CRC's Hot Topics webpage at: <https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm>.

**Unlawful Discrimination Based on Disability**

The Rehabilitation Act of 1973 prohibits discrimination by federal agencies against qualified individuals with disabilities.

An individual with a disability is a person who:

* Has a physical or mental impairment that substantially limits one or more major life activity(ies);
* Has a record of such an impairment; or
* Is regarded as having such an impairment.

On September 25, 2008, the **Americans with Disabilities Act Amendments Act of 2008** ("ADA Amendments Act" or "Act") was signed into law. The Act emphasized that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted and generally shall not require extensive analysis. The Act made important changes to the definition of the term "disability." The effect of these changes has been to make it easier for individuals seeking protection to establish that they have a disability under the law.

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**Unlawful Discrimination Based on Disability**

No agency within the Department of Labor may:

* Treat individuals with a disability less favorably in any aspect of employment because a disability;
* Treat individuals with a disability less favorably because they have a history of a disability (such as cancer that is controlled or in remission);
* Treat individuals less favorably because they are perceived to have, or are "regarded as having," a physical or mental impairment that is not "transitory" (i.e. lasting or expected to last six months or less) and "minor."

**Are you protected under the Rehabilitation Act and Americans with Disabilities Act Amendments Act?**

As a DOL employee or applicant, you are protected under the Rehabilitation Act and the ADAAA if you have a disability and are qualified to do the job.

First, you may be considered an individual with a disability if one of the following applies:

* You have an actual disability (i.e., a physical or mental impairment that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning));
* You have a "record of disability" (such as cancer that is in remission); or
* You are perceived to have a physical or mental impairment, even if you do not have such an impairment and irrespective of whether that impairment would substantially limit a major life activity.

Second, you are considered qualified if both of the following apply:

* You satisfy the Department's requirements for the job, such as having the requisite skills, experience, education, and other related requirements of the position; and
* You can perform the essential functions of the job with or without a reasonable accommodation.

For more information on disability discrimination, select the applicable document on the on the CRC's Hot Topics webpage at:[https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm](https://learninglink.dol.gov/content/dol/DOL_NOFEAR_2016_11012016/course/%20https%3A/www.dol.gov/oasam/programs/crc/internal-hot-topics.htm%22%20%5Ct%20%22_blank).

**Unlawful Discrimination Based on Disability, Reasonable Accommodation**

A federal agency is required to provide reasonable accommodation for employees or applicants with disabilities at: <http://labornet.dol.gov/workplaceresources/policies/DLMS/DLMS04/dlms4-0306.htm>

Reasonable accommodation may include, but is not limited to:

* Making existing facilities used by employees readily accessible to and usable by persons with disabilities;
* Job restructuring, modifying work schedules, reassignment to vacant positions; and
* Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of an applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

**Unlawful Discrimination Based on Disability, Reasonable Accommodation cont.**

***How does a DOL employee or applicant request a reasonable accommodation if needed?***

When an employee or applicant decides to request an accommodation, the individual or the individual’s representative must let DOL know that the employee/applicant needs an adjustment or change at work for a reason related to a medical condition.

* An employee/applicant can make a reasonable accommodation request to a Deciding Official (typically the first line supervisor/manager), the agency’s EEO Manager, the servicing human resources office, CRC, a management official, or any agency employee connected with the job application process (for applicants).
* To request an accommodation, an individual may use “plain language” and need not mention the Americans with Disabilities Act, the Rehabilitation Act or use the phrase “reasonable accommodation.”
* An employee/applicant may verbally request a reasonable accommodation, but should confirm the request using the Confirmation of Reasonable Accommodation Request form (Appendix A) that can be provided by the CRC.

If the disability or need for the requested accommodation is not obvious or already known, medical documentation that supports or confirms the functional limitation(s) will be requested from the employee/applicant by the CRC or EEO Manager.

Accommodation requests made to the Deciding Official, EEO Manager, Servicing Human Resources Office, any management official, or any agency employee connected with the job application process must be immediately forwarded to the CRC (within two (2) business days) for intake and tracking. Requests can be sent to CRC at rarc.info@dol.gov, phone (202) 693-6500 (voice), fax (202)693-6505, tty (800)877-8339, or video relay (877) 709-5797.

**Unlawful Discrimination Based on Disability, Reasonable Accommodation**

***How will the Agency respond when a request for a reasonable accommodation is made?***

Once a request for accommodation is received, the interactive process will begin. The interactive process is an informal process to clarify what the individual needs and identify the appropriate effective reasonable accommodation(s). **The participants of the interactive process are: the employee/applicant, the Deciding Official, the EEO Manager, and the CRC.**

The purpose of the interactive process is to determine what accommodation should be provided. This means that the individual requesting the accommodation must communicate with the appropriate persons throughout the entire process, but particularly where:

(a) The specific limitation or barrier is unclear;

(b) An effective accommodation is not obvious;

(c) The parties are considering different forms of reasonable accommodation; or

(d) The current accommodation is no longer effective and another effective, accommodation must be identified.

**Unlawful Discrimination Based on Disability, Reasonable Accommodation cont**

The individual making the request, and the Deciding Official, CRC and/or the EEO Manager should work together during the interactive process to identify effective accommodations. All final decisions regarding requests for reasonable accommodations must be issued in writing. All decisions are issued by and from the Deciding Official, following consultation with CRC, the EEO Manager, and/or SOL.

Timeframes for processing requests for accommodation(s) will vary as no two accommodation requests will ever be identical. Factors in processing times include but are not limited to:

* nature or type of accommodation requested;
* whether it is necessary to obtain supporting information (in cases where what has been provided by the employee may not establish the disability, its limitations, or the need for a specific accommodation);
* whether an additional assessment is required following the receipt of initial medical documentation;
* whether procurement/purchase is necessary to fulfill the reasonable accommodation request.

**Reasonable Accommodation, Medical Inquiries and/or Examinations**

Employers may not ask job applicants about the existence, nature, extent, and duration of a disability. However, applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Once an employee has been hired and started work, the agency cannot require an employee to take a medical examination or ask questions about a disability unless they are related to the job and necessary for the conduct of the agency's business.

For more information on reasonable accommodation, select the applicable document on the CRC's Hot Topics webpage at: <https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm>.

**Unlawful Discrimination Based on Genetic Information**

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits genetic information discrimination in employment, took effect on November 21, 2009.

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 any disease, disorder, or condition of an individual’s family members (i.e., an individual’s 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.

Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. An employer may never use genetic information to make an employment decision because genetic information doesn’t tell the employer anything about someone’s current ability to work. Under GINA, it is also illegal to harass a person because of his or her genetic information. Harassment can include, for example, making offensive or derogatory remarks about an applicant's or employee’s genetic information, or about the genetic information of a relative of the applicant or employee.

For more information on discrimination on the basis of genetic information, select the applicable document on the CRC's Hot Topics webpage at:[http://www.dol.gov/oasam/programs/crc/finalGINAguidance.htm](http://www.dol.gov/oasam/programs/crc/finalGINAguidance.htm%22%20%5Ct%20%22_blank)

**Additional Protections against Unlawful Employment Discrimination: Sexual Orientation and Parental Status**

In addition to the laws covered by the No FEAR Act, federal employees are also protected from discrimination on the bases of sexual orientation and status as a parent by Executive Orders 13087 and 13152, respectively.

If one believes that they have been discriminated against on either of these bases, the same procedures and time frames for EEO Counselor contact outlined previously will apply. However, employees may be precluded from requesting a hearing from the EEOC or appealing a final agency decision to the EEOC.

**Harassment**

In addition to sexual harassment as discussed previously, unlawful harassment or a hostile work environment can also occur based on other protected characteristics.

A hostile work environment can result from the unwelcome conduct of supervisors, co-workers, customers, vendors, or anyone else with whom an employee interacts on the job.

Examples of behaviors that can contribute to a hostile environment include:

* Discussing sexual activities;
* Telling off-color jokes concerning race, sex, disability, or other protected bases;
* Unnecessary touching;
* Commenting on physical attributes;
* Displaying sexually suggestive or racially insensitive pictures;
* Using demeaning or inappropriate terms or epithets;
* Using indecent gestures;
* Using crude language;
* Sabotaging the victim's work; and
* Engaging in hostile physical conduct.

Not all unwelcome conduct violates the law, however;

* First, the conduct must be unwelcome and based on the victim's protected status.
* Second, the conduct must be:
	+ Subjectively abusive to the person affected; and
	+ Objectively severe or pervasive enough to create a work environment that a reasonable person would find hostile or abusive.

Whether an instance or a pattern of harassing conduct is severe or pervasive is determined on a case-by-case basis, with consideration paid to the following factors:

 The frequency of the unwelcome discriminatory conduct;

 The severity of the conduct;

 Whether the conduct was physically threatening or humiliating, or a mere offensive utterance;

 Whether the conduct unreasonably interfered with work performance;

 The effect on the employee's psychological well-being; and

 Whether the harasser was a superior within the organization.

Each factor is considered, but none are required or dispositive. Hostile work environment cases are often difficult to recognize, as the particular facts of each situation determine whether offensive conduct has crossed the line from "ordinary tribulations of the workplace, such as the sporadic use of abusive language...and occasional teasing," to unlawful harassment.

Given this uncertainty, the Department of Labor's Harassing Conduct Policy is an important resource for addressing incidents of unwelcome conduct long before they become severe and/or pervasive enough to create a hostile work environment.

**DOL Harassing Conduct Policy**

* The Department's Harassing Conduct policy is applicable to harassing behavior directed at an individual due to any protected basis, not just sex/gender.
* The Department has determined that the most effective way to limit harassing conduct is to treat it as misconduct, even if it does not rise to the level of harassment actionable under the law. The goal of this Policy is to eliminate harassment before it becomes severe and/or pervasive enough to violate the law.
* Therefore, for the purposes of this Policy, harassing conduct is defined more broadly as "any unwelcome verbal or physical conduct based on any characteristic protected by law when:
	+ the behavior can reasonably be considered to adversely affect the work environment; or
	+ an employment decision affecting the employee is based on the employee's acceptance or rejection of such conduct."

It is the responsibility of every employee to promptly report harassing conduct to anyone in his/her supervisory chain so that prompt, remedial action can be taken.

See: [DOL Policy and Procedures for Preventing and Eliminating Harassing Conduct in the Workplace (DLMS 4, Chapter 700)](http://dol.gov/oasam/programs/crc/crc-internal/dlms4-0700.htm)

For more information on harassment, select the applicable document on the CRC's Hot Topics webpage at <https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm>

**Unlawful Discrimination Based on Retaliation under Antidiscrimination Laws**

To better protect all employees in the exercise of their rights under federal civil rights statutes, DOL managers, supervisors and employees are prohibited from engaging in unlawful retaliation including intimidating, harassing, or engaging in any other adverse action, whenever that action is reasonably likely to deter protected EEO activity, and the action is taken because a person engaged in EEO activity.  Protected EEO activity includes opposing a practice made unlawful by engaging in a right extended by, or participating in any state of administrative or judicial proceeding under, relevant employment discrimination laws.

An adverse action is an action taken to penalize someone for or prevent someone from opposing a discriminatory employment practice, participating in an employment discrimination proceeding, or requesting an accommodation based on disability or religion.

Examples of adverse actions include: (1) denial of promotion; (2) non-selection/refusal to hire; (3) denial of job benefits; (4) demotion; (5) suspension; (6) discharge; (7) threats; (8) reprimands; (9) negative evaluations; (10) harassment; or (11) other adverse treatment that is likely to deter reasonable people from pursing their rights.

For more information on retaliation, select the applicable document on the CRC's Hot Topics webpage at:[https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm](https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm%22%20%5Ct%20%22_blank).

**Remedies**

The policy of the [Equal Employment Opportunity Commission (EEOC)](http://www.eeoc.gov/), the federal agency charged with enforcing many antidiscrimination laws, is to seek full and effective relief for each and every victim of discrimination once discrimination has been established.

The remedies may include:

* Posting a notice to all employees advising them of their rights under the laws that the EEOC enforces and their right to be free from retaliation;
* Corrective or preventive actions to cure or correct the source of the identified discrimination;
* Nondiscriminatory placement in the position the victim would have occupied if the discrimination had not occurred;
* Compensatory damages;
* Back pay (with interest if applicable) and lost benefits; and
* Stopping the specific discriminatory practices involved.

**Additional Protections - Marital Status and Political Affiliation**

Discrimination based on employees’ marital statuses or political affiliations is considered a prohibited personnel action under the [Civil Service Reform Act of 1978](http://www.opm.gov/biographyofanideal/PU_CSreform.htm). Employees who believe they have been the subject of discrimination based on either marital status or political affiliation may file a complaint with the [Office of Special Counsel](http://www.osc.gov/).

**Agency Responsibilities**

Every federal agency must issue a written policy statement expressing its commitment to equal employment opportunity (EEO) and a workplace free of discriminatory harassment. Agencies must also have an efficient and fair dispute resolution process. The Secretary of the Department of Labor has issued a policy statement expressing commitment to EEO and detailing the responsibilities of employees under the policy.

Please visit the Department of Labor Equal Employment Opportunity Policy at: [www.dol.gov/oasam/programs/crc/crc-internal/eeo.htm](http://www.dol.gov/oasam/programs/crc/crc-internal/eeo.htm)

The Department of Labor Equal Employment Opportunity Policy was signed by Secretary of Labor Thomas E. Perez on December 13, 2013.

**Manager and Supervisor Responsibilities**

Managers or supervisors are required to:

* Ensure they have legitimate, non-discriminatory reasons for the actions they take;
* Ensure they treat employees fairly and equitably;
* Provide reasonable accommodation to individuals with disabilities; and check with the agency EEO Manager if they have questions about whether reasonable accommodation is appropriate;
* Only disclose medical information to officials with a need to know and keep medical information separate from personnel files;
* Provide a reasonable amount of official time to an employee who requests time to work on an EEO complaint;
* Cooperate with an EEO Counselor or EEO investigator;
* Ensure employees are not subjected to a hostile work environment because of their race, color, religion (including reasonable accommodation of religious beliefs or practices), sex (including pregnancy, childbirth and related medical conditions, transgender status, gender identity, and sex stereotyping), national origin (including ethnicity, accent, and use of a language other than English), age, disability (including reasonable accommodation of physical or mental disability), genetic information, parental status, sexual orientation, marital status, political affiliation or belief, or any other prohibited factor; and
* Act **promptly** on all complaints of harassment.

**Retaliation for Engaging in Whistleblower Disclosure**

A federal agency cannot retaliate against employees or applicants because individuals exercise their rights under whistleblower protection laws. Whistleblowers can obtain corrective action for reprisal if they can show that the disclosure of the information was a **contributing factor** in a personnel action, **unless** the agency shows by **clear and convincing evidence** that it would have taken the same personnel action in the absence of the disclosure.

A **contributing factor** is any factor which, alone or in connection with others, tends to affect in any way the outcome of the personnel action at issue. Retaliation for engaging in whistleblower disclosure can be established by:

* Knowledge/timing alone; and
* Circumstantial evidence.

**Federal Whistleblowing**

Enacted in 1989 by Congress, the Whistleblower Protection Act of 1989; was established to strengthen protection for federal whistleblowers and to prevent retaliation against them. Any federal employee, former employee, or applicant for federal employment may be a whistleblower.

Whistleblowers report fraud, waste, abuse, and unnecessary government expenditures within federal agencies.

**Federal Whistleblower Protection Laws**

A federal employee authorized to take, direct others to take, recommend, or approve any personnel action may not engage in reprisal for whistleblowing – i.e., take, fail to take, threaten to take or fail to take a personnel action with respect to any employee or applicant because of any disclosure of information by the employee or applicant that they reasonably believe evidences:

* A violation of a law, rule, or regulation;
* Gross mismanagement;
	+ **More than a de minimus wrongdoing or negligence – an action that creates a risk of significant adverse impact on the accomplishment of an agency’s mission.**
* Gross waste of funds;
	+ **More than a debatable expenditure.**
* An abuse of authority;
	+ **An arbitrary or capricious exercise of power that injures another, or benefits the abuser of others.**
* A substantial and specific danger to public health or safety.

**Whistleblower Disclosures**

If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the [Office of Special Counsel (OSC).](http://www.osc.gov/) The OSC is delegated the authority to investigate and seek corrective action in whistleblower retaliation cases.

The OSC is the federal agency designated to receive complaints under the Whistleblower Protection Act, including complaints of retaliation. The DOL Office of Inspector General (OIG) can also receive disclosures by whistleblowers. All employees are required to provide information to the OIG or OSC in the investigation process when information is requested.

**TOOLS: Resources Links**

Select a resource from the listing below to open in a new window:

[DOL's No FEAR Act Notice](http://labornet.dol.gov/me/eeodiversity/eeo/No-FEAR-Act-Notice.htm)

[Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002](http://dol.gov/oasam/programs/crc/NOFEAR.htm)

[Equal Employment Opportunity Counselors](https://www.dol.gov/oasam/programs/crc/counseling-mediation-staff.htm)

[Agency Equal Employment Opportunity Managers](http://www.labornet.dol.gov/me/eeodiversity/eeo/Agency-EEO-Managers.htm)

[Filing an EEO Complaint](http://labornet.dol.gov/me/eeodiversity/eeo/Your-Rights-EEO.htm)

[DOL Equal Employment Opportunity Program](http://labornet.dol.gov/workplaceresources/policies/DLMS/DLMS04/dlms4-0300.htm)

[Harassing Conduct in the Workplace](http://www.dol.gov/oasam/programs/crc/crc-internal/Policy-Statement-on-Harassing-Conduct-in-the-Workplace.htm)

[Reasonable Accommodations for Employees and Applicants with Disabilities](http://labornet.dol.gov/workplaceresources/policies/DLMS/DLMS04/dlms4-0306.htm)

[Office of Special Counsel website](http://www.osc.gov/)

[Merit Systems Protection Board website](http://www.mspb.gov/)

[Equal Employment Opportunity Commission (EEOC) website](http://www.eeoc.gov/)

[Equal Pay Act](http://www.eeoc.gov/laws/statutes/epa.cfm)

[Age Discrimination in Employment Act](http://www.eeoc.gov/laws/statutes/adea.cfm)

[Rehabilitation Act of 1973](http://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter16&edition=prelim)(as amended)

[Civil Rights Act of 1964, Title VII](http://www.dol.gov/oasam/regs/statutes/2000e-16.htm)

[Civil Service Reform Act of 1978](http://www.opm.gov/biographyofanideal/PU_CSreform.htm)

[Genetic Information Nondiscrimination Act of 2008 (GINA)](http://www.eeoc.gov/laws/statutes/gina.cfm)

[EEO Policy](http://www.dol.gov/oasam/programs/crc/crc-internal/eeo.htm)