PROTECTING SEXUAL ORIENTATION AND GENDER IDENTITY WORKPLACE RIGHTS

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Equal Employment Opportunity Commission

St. Louis District Office

BOSTOCK V. CLAYTON COUNTY AFFIRMED THAT TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (TITLE VII) PROHIBITS EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION OR GENDER IDENTITY.

TITLE VII

- Prohibits discrimination in employment based on race, color, religion, *sex* and national origin.

- Applies to private employers, state and local governments, educational institutions, employment agencies, and labor organizations with 15 or more employees.

- Applies to federal workplaces.

Equal Employment Opportunity is THE LAW

Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

TERMINOLOGY

SEXUAL ORIENTATION

An enduring, often inherent, emotional, romantic and/or sexual attraction to other people.

An individual's sexual orientation is entirely independent of their gender identity or expression.

GENDER IDENTITY

One's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves.

One's gender identity can be the same or different from their sex assigned at birth.

Cannot be assumed based on appearance, anatomy, social norms, or stereotypes.

- Lesbian
- Gay
- Bisexual
- Transgender
- Queer
- Intersex
- Asexual

TRANSGENDER

An umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth.

Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.

Transgender Woman

A person who was designated male at birth, but identifies and may live as a woman. Occasionally referred to as "MTF" or male-to-female.

Transgender Man

A person who was designated female at birth, but identifies and may live as a male. Occasionally referred to as "FTM" or female-to-male.

NOTE: Unless context makes it relevant to point out that the person is transgender, simply refer to a transgender person as a "man" or "woman."

Transitioning

A series of processes that some transgender people may undergo in order to live more fully as their true gender. This typically includes social transition, such as changing name and pronouns, medical transition, which may include hormone therapy or gender affirming surgeries, and legal transition, which may include changing legal name and sex on government identity documents. Transgender people may choose to undergo some, all or none of these processes.

GENDER NEUTRAL LANGUAGE

GENDERED LANGUAGE:
WORDS OR PHRASES WITH A BIAS TOWARD SEX OR GENDER

WHY GENDER NEUTRAL LANGUAGE IS IMPORTANT:
- It is inclusive of those that identify outside of the gender binary
- Disassociate job types with expectations of gender
- Be more accurate when addressing individuals and crowds

GENDERED NOUNS	NEUTRAL NOUNS
He/Him/His - She/Her/Hers	They/Them/Theirs
Father - Mother	Parent - Gaurdian
Husband - Wife	Spouse - Partner
Son - Daughter	Child-Kid
Brother - Sister	Sibling
Boyfriend - Girlfriend	Partner - Significant Other

GENDERED JOB TITLES	NEUTRAL JOB TITLES
Waiter - Waitress	Server
Steward - Stewardess	Flight Attendant
Mailman - Mailwoman	Postal Worker
Policeman - Policewoman	Police Officer
Fireman	Firefighter

GENDERED GREETINGS	NEUTRAL GREETINGS
Ladies - Gentlemen	Distinguished Guests
You Guys	Y'all, Folks, Everyone
Ma'am - Sir	Hello or omit these titles
Mr., Mrs., Ms., Miss	Mx. or use name and/or professional title

Sources:
https://crystalhuff.com/2017/02/16/gender-inclusive-forms-of-address/
https://writingcenter.unc.edu/tips-and-tools/gender-inclusive-language/
https://genderqueeries.tumblr.com/titles

Retrieved:
https://www.facebook.com/ltcerasmus/photos/a.457597497597496/3470291529661396/?type=3 09092021

PRONOUNS

WORDS MATTER

"Homosexual"

"That's so gay/You're so gay"

"You don't look gay/trans"

"What's your real name?"

"Transgendered"

"Ladies and Gentlemen"

"Real women/Men"

"It"

"Why would you transition if your going to be gay?"

"Dyke/Fag/Tranny"

"You're just confused"

"Lifestyle"

"Queer"

"Sexual Preference"

"Transvestite/Transsexual"

DIVERSITY AND INCLUSION

Diversity is about the representation of persons of different backgrounds and experience in the workplace.

Inclusion is about how these person's differences of thought and experience are actually appreciated and integrated into the workplace.

A workplace where different genders, races, nationalities, age, sexual orientations, identities, etc., are represented, but not valued or they do not carry any authority or influence, may be diverse, but it is not inclusive.

INCLUSION
Thoughts, ideas and perspectives of all individuals matter

Over saturation of similarity, homogeneous culture, and simplified points of view

The dominant group or ideology is deferred to for decision making, opportunities and promotions

BELONGING
An org that engages full potential of the individual, where innovation thrives, and views, beliefs and values are integrated

EQUITY
Constantly and consistently recognizing and redistributing power

Culture assimilation results in disengagement and low retention

DIVERSITY
Multiple identities represented in an organization
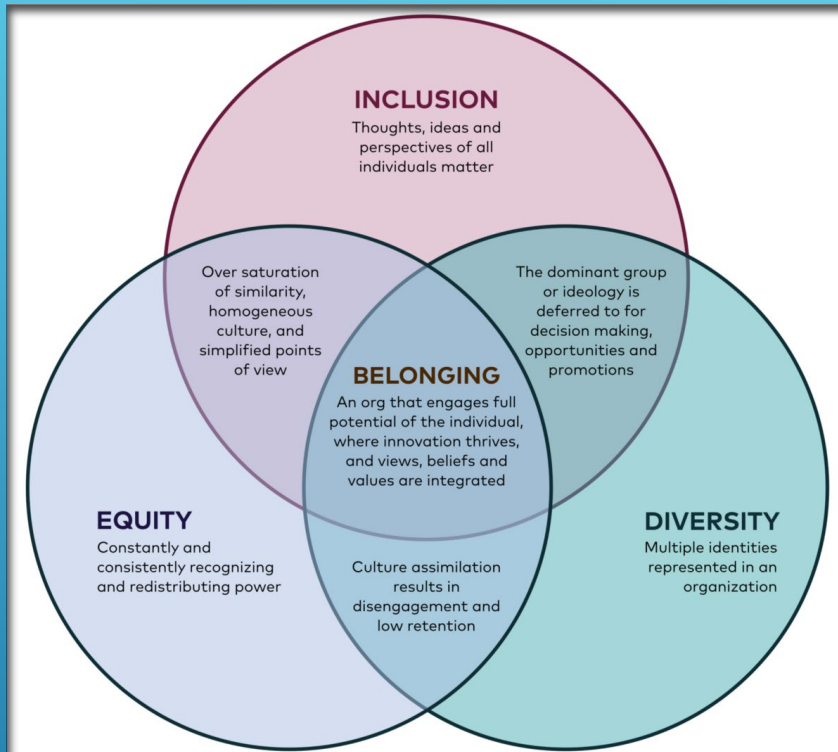
A diverse and inclusive workplace makes everyone feel equally involved and valued in all areas of the workplace.

SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION

IT IS ILLEGAL TO TAKE A NEGATIVE EMPLOYMENT ACTION AGAINST SOMEONE ON THE BASIS OF THEIR SEXUAL ORIENTATION OR GENDER IDENTITY

Refusal to hire

Termination

Promotion

Demotion
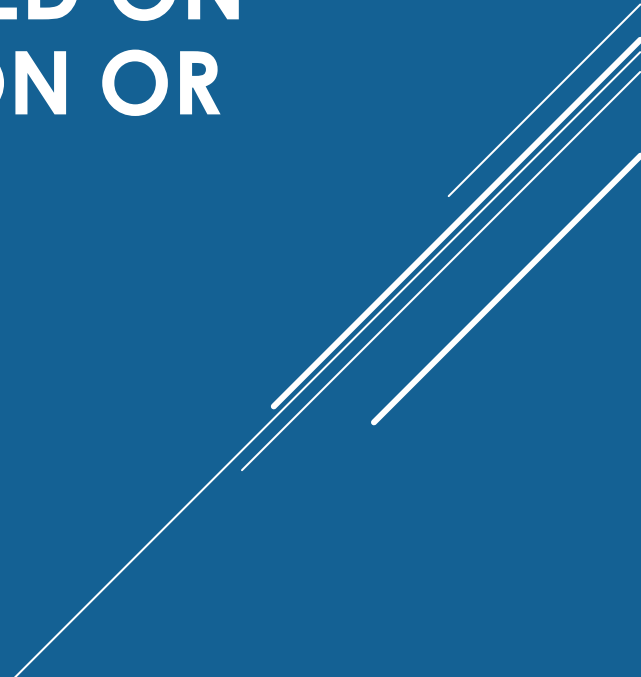
Undesirable assignments

Lesser pay

Training

Unequal benefits

Offensive or derogatory remarks about sexual orientation.
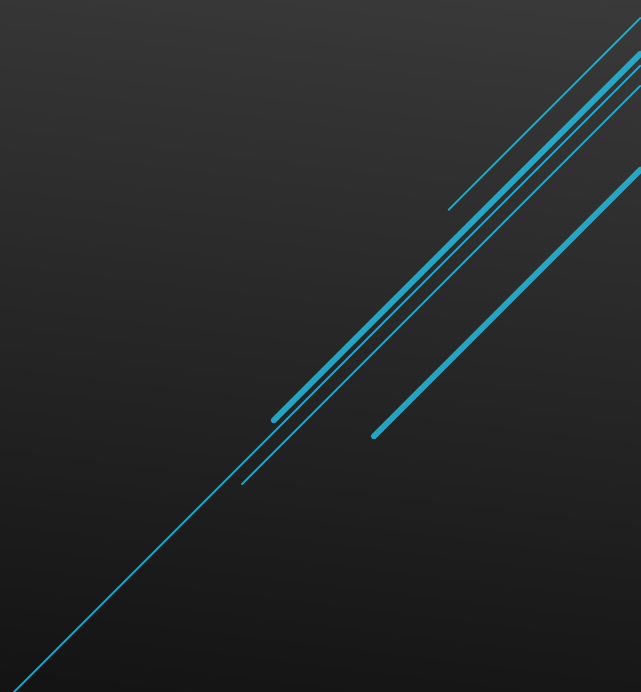
Offensive or derogatory remarks about a person's transgender status or gender transition.

Applies to customers and clients.

IT IS ILLEGAL TO SUBJECT AN EMPLOYEE TO WORKPLACE HARASSMENT THAT CREATES A HOSTILE WORK ENVIRONMENT BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY

IT IS ILLEGAL FOR AN EMPLOYER TO RETALIATE AGAINST, HARASS, OR OTHERWISE PUNISH ANY EMPLOYEE FOR:

- opposing employment discrimination that the employee reasonably believed was unlawful;

- filing an EEOC charge or complaint;

- participating in any investigation, hearing, or other proceeding connected to Title VII enforcement.

BEST WORKPLACE PRACTICES

- Leadership
- Accountability
- Policies
- Benefits
- Training
- Recruitment and Hiring
- Goals/Metrics
- Employee Resource Groups

LEADERSHIP

- ▶ A diverse and inclusive workplace free from harassment starts at the top.

- ▶ Leadership Team should model inclusive behavior and foster a culture that does not tolerate harassment.

- ▶ Devote sufficient resources to harassment prevention efforts.

- ▶ Demonstrate accountability.

ACCOUNTABILITY

- Ensure that where harassment is found to have occurred, discipline is prompt and proportionate to the severity of the infraction.

- Ensure that where harassment is found to have occurred, discipline is consistent, and does not give undue favor to any particular employee.

- Hold managers and supervisors accountable for preventing and/or responding to workplace harassment, including through the use of metrics and performance reviews.

- Provide an effective and safe reporting system and workplace investigation system

POLICIES

- Ensure that your Anti-harassment and Anti-discrimination policies make it clear that harassment and discrimination will not be tolerated.
  - Include specific language that prohibits discrimination and harassment based on sexual orientation and gender identity.
  - Include language that describes the complaint and investigation process, to include confidentiality and protection against retaliation.
  - Include language that assures prompt and appropriate corrective action when harassment is found to have occurred.
- Ensure you have a formal policy that outlines standards and expected behavior of all employees, including examples of prohibited behavior.
- Dress and grooming policies should be neutral.
- Use gender neutral language.
- Policies should be written in clear, simple words and in all languages used in the workplace.
- Policies should be accessible to all employees and communicated on a regular basis.

BENEFITS

- Review, review , review…
  - coverage terms
  - eligibility for same-sex spouses/domestic partners
  - benefit plans administration and benefits claims forms
  - EAP services
- Ensure your benefits package, health plan coverage and procedures, leave and insurance benefits, and any other fringe benefits, is relevant and equally available to all employees.
- Ensure your benefits package uses gender neutral and inclusive language.
- Periodically review benefits package to ensure benefits remain relevant to all employees.

TRAINING

- Provide organization wide training that reviews anti-discrimination and anti-harassment policies, as well as how to recognize, eliminate, and report discrimination in the workplace.

- Training should include diversity and inclusion topics, including LGBTQ specific topics.

- Training should be provided to all new hires and to all other employees on a regular basis.

- Leaders, managers, supervisors, and HR professionals, should be provided with regular training that ensures they understand the employer's anti-discrimination and anti-harassment policies, their responsibilities for ensuring compliance of such, and how to prevent and respond to harassment .

- Leaders, managers, supervisors, and HR professionals, should be provided with regular training that increases their understanding of diverse and inclusive work environments and how to foster those in their particular role.

- Consider workplace civility training and bystander intervention training.

- Assess

RECRUITMENT AND HIRING

- ▶ Review all recruitment and hiring policies and procedures to ensure they include non-discriminatory and inclusive practices.

- ▶ Use gender neutral language in job postings and hiring materials.

- ▶ Be explicit that all gender identities and all orientations are encouraged to apply.

- ▶ Utilize LGBTQIA friendly job sites that recruit individuals from all sexual orientations and gender identities.

GOALS AND METRICS

- ▶ Prepare written goals and define measurable objectives.

- ▶ Assess workplace for risks factors.

- ▶ Climate surveys

- ▶ Collect workplace demographics related to sexual orientation and gender identity.

- ▶ Effective and safe reporting system

- ▶ Workplace investigation system

- ▶ Assess impact of training on reduction of discrimination/harassment.

- ▶ Participate in outside programs which measures an employer's policies, practices and benefits for LGBTQ employees.

EMPLOYEE RESOURCE GROUPS

- Employee resource groups (ERGs) (employee networks, affinity groups and business groups, etc.)are voluntary, employee-led groups that promote a diverse and inclusive workplace.

- LGBTQIA ERGs provide employees with the opportunity to meet and exchange ideas, learn about topics and skills relevant in the workplace, participate in the recruitment of LGBTQIA talent, and partner with other LGBTQIA groups and organizations.

"ALL PEOPLE, REGARDLESS OF SEXUAL ORIENTATION AND GENDER IDENTITY, DESERVE AN OPPORTUNITY TO WORK IN AN ENVIRONMENT FREE FROM HARASSMENT OR OTHER DISCRIMINATION." ~ CHARLOTTE A. BURROWS, EEOC CHAIR

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU MAY TAKE ACTION TO PROTECT YOUR RIGHTS UNDER TITLE VII BY FILING A COMPLAINT:

▸ **Private sector and state/local government employees** may file a charge of discrimination by contacting the EEOC at 1-800-669-4000 or going to https://www.eeoc.gov/how-file-charge-employment-discrimination.

▸ **Federal government employees** may initiate the complaint process by contacting an EEO counselor at your agency; more information is available at https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process.

FOR MORE INFORMATION:

- Supreme Court Decision in *Bostock v Clayton County*

- Sexual Orientation and Gender Identity (SOGI) Discrimination

- Technical Assistance Document – Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity

- Select Task Force on the Study of Harassment in the Workplace

- Fact Sheet: Facility/Bathroom Access and Gender Identity

- Learn about employers' rights and responsibilities under EEO law

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QUESTIONS