



950 Pennsylvania Ave NW, Room 5736, Washington, DC 20530 • www.dojpride.org

August 17, 2015

The Honorable Loretta E. Lynch
Attorney General of the United States
U.S. Department of Justice
Robert F. Kennedy Main Building
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Lynch:

DOJ Pride is thrilled to have such a strong ally at the helm of the Department, and we look forward to working with you to ensure that our members are able to participate fully and equally in the workplace. To that end, we write to identify three priorities to help make the Department a model agency for LGBT employees.

DOJ Pride commends the recent advances in the Department's approach to LGBT matters: ending the defense of DOMA, enforcing the Shepard-Byrd Hate Crimes Act, recognizing gender identity discrimination as a form of sex discrimination prohibited by Title VII, and advocating for full nationwide marriage equality before the Supreme Court, to name a few. We also applaud the appointment of openly-LGBT people to high-ranking positions within DOJ and the establishment of a formal LGBT Special Emphasis Program. We further appreciate the commitment you expressed at Lambda Legal "to spread fairness, dignity and equality to every corner of this nation." These efforts have been a significant morale boost to the Department's LGBT employees and allies.

However, much work remains. DOJ Pride continues to receive disturbing reports of inappropriate workplace behavior, indicating that progress has been uneven within the Department. We also continue to hear departing employees cite an unwelcoming environment as a motivating factor for leaving the Department, including one of our very own Board members this past May. We thus request the following actions to address the problems that persist and promote an open and inclusive environment:

1. Update the Department's EEO Order and Policy to Reflect Current Law.

The Department's current [EEO Order](#) should be updated to reflect the EEOC's most recent EEO management directive, [MD-110](#), to accurately state that allegations of discrimination on the basis of gender identity, transgender status, and sexual orientation will be entitled to

treatment as claims of sex discrimination prohibited under Title VII. The EEOC's *Macy* (2012) and *Baldwin* (2015) decisions make clear that Title VII treatment is required, and these decisions are binding on the Department in its role as a federal employer. This issue is significant to our membership, as the Title VII complaint track entitles a complainant to far greater rights, remedies, and protections than the Department's non-Title VII complaint track.

DOJ Pride has been informed by the Justice Management Division that Department components have been instructed to give Title VII treatment to claims alleging discrimination on the basis of gender identity, transgender status, and sexual orientation. Mere instructions are insufficient. The Department's published EEO order provides the notice to employees of how their claims will be treated and ensures that components process claims appropriately. The Department's [EEO order](#) currently reads as follows:

Discrimination Complaint Processing System.

1. **General.** All discrimination complaints based on race, color, religion, national origin, sex, age, disability (physical and mental), genetic information, and reprisal, will be processed and adjudicated in accordance with EEOC regulations and directives set forth at 29 CFR 1614 and Management Directive 110. Complaints based on an applicant's or employee's gender identity, sexual orientation or status as a parent, will be processed and adjudicated in accordance with paragraph B.7.j of the DOJ 1200.1 (Chapter 4-1). . . .

. . . .

10. **Complaints of Discrimination on the Bases of Sexual Orientation, Gender Identity or Status as a Parent.** Complaints of discrimination on the bases of sexual orientation, gender identity, or status as a parent will be processed by utilizing the informal EEO counseling process and, as necessary, the EEO Alternative Dispute Resolution (ADR) Program. . . . Individual entitlement in this regard is derived from Department of Justice policy and practice and not from EEOC regulations which govern other types of discrimination complaints in the Federal Sector. Although complaints based on sexual orientation and parental status are processed under the same administrative time frames, they cannot be the subject of a hearing before an EEOC administrative judge or an appeal to the EEOC.

This language is outdated and inaccurate. The EEOC's most recent Management Directive 110 references the *Macy* and *Baldwin* decisions in expressly stating that "Title VII's prohibition against sex discrimination includes discrimination on the basis of pregnancy, sexual orientation and gender identity including transgender status." Accordingly, we request that the Department specify in its EEO order and [EEO policy](#) that it will treat discrimination based on these characteristics as a form of sex discrimination.

The Department has not yet updated the EEO order in the more than three years that have passed since the EEOC's *Macy* decision. DOJ Pride asked Attorney General Holder to take action on this issue in 2013 in light of that decision, and we have repeatedly engaged JMD and

the EEO office on this matter. The contemplated revisions seem straight-forward, and we do not understand the delay. We urge you to prioritize completion of this long-overdue update.

2. Conduct a Department-wide Diversity Climate Survey.

We request a Department-wide diversity climate survey that includes LGBT matters. Unless and until the Department understands the type and scope of problems faced by its LGBT employees, the Department will have limited success addressing challenges to creating a truly inclusive workplace. We have long requested such a survey, and Dr. Richard Friend, an expert who conducted LGBT inclusion training for Department managers in June 2012, echoed our request in his post-training recommendations to the Department. Implementing this best-practice would promote inclusiveness both by highlighting specific areas for improvement and by signaling to employees that a diverse workplace is indeed valued.

Notably, in 2010, the Environment and Natural Resources Division conducted a pilot LGBT diversity climate survey with the help of DOJ Pride. ENRD traditionally receives high ratings in the Federal Employee Viewpoint Survey, but the survey results indicated that many of ENRD's LGBT employees do not feel welcome and affirmed. Although a few individual components now conduct general diversity climate surveys, Department-wide data that includes LGBT issues is needed to provide the data and information necessary to identify, address, and benchmark challenges over time.

3. Collect LGBT Demographic Data on Applicants and Employees.

The Department should advocate for an amendment to Standard Form 181 to allow for the voluntary self-identification of LGBT status to enable the Department to collect LGBT demographic information for applicants and employees. If an amendment to the standard form cannot be obtained, we urge the Department to seek a waiver to use a customized form that solicits this information on a voluntary basis instead of SF-181.

The Department's EEO policy states that the Department "will ensure that all programs to recruit, hire, train, develop, promote, reward, and discipline employees are conducted in a fair and consistent manner, and solely on the basis of merit." In order to evaluate whether programs are being conducted in a fair and consistent manner, the Department must be able to measure how different groups of employees are faring in this regard. Without this information, the Department cannot track changes in the composition of its workforce or analyze barriers to the participation of LGBT individuals. This lack of information also renders the Department unable to analyze the conditions for LGBT employees in its annual reporting under Management Directive 715. The Department currently collects this data for Honors Program applicants, suggesting that the utility of this information is recognized, and more comprehensive data would yield a more complete analysis. For these reasons, the collection of LGBT demographic information is vital to ensuring that the Department is meeting its equal employment opportunity obligations.

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Thank you for your consideration. We look forward to building a partnership with you to ensure the full participation of the Department's LGBT employees and would welcome the opportunity to discuss our concerns and recommendations in person.

Respectfully,

John Elias

John Elias
President

Barbara Schwabauer
Vice President

Robert A. Koch
Secretary

Latashia R. Gohlke
Wendi Hammond
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Jennifer Sanders
Board Members

cc:
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Office of the Associate Attorney General
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