



March 27, 2019

The Honorable William P. Barr
Attorney General of the United States
U.S. Department of Justice
Robert F. Kennedy Main Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Barr:

On behalf of DOJ Pride, we congratulate you on your appointment as the 85th Attorney General of the United States. Welcome back to the Department of Justice.

DOJ Pride was founded in 1994 to represent the thousands of lesbian, gay, bisexual, transgender, and queer (LGBTQ) employees and contractors, as well as their allies, who serve the Department each day with professionalism and distinction. We have a history of collaborating with Department leadership to identify and address issues that affect the Department's LGBTQ employees. We write today to express our desire to work with you and your leadership team to foster a welcoming and inclusive workplace here at the Department.

To further this goal, we raise two related matters that are of present concern to our membership: the Department's failure to issue an Equal Employment Opportunity (EEO) statement as required by law, and the declining morale of the LGBTQ workforce.

Equal Employment Opportunity Statement

An EEO statement is a critical affirmation of an agency's rights and values. The requirement to issue an EEO statement stems from the Civil Rights Act of 1964, as implemented by the Equal Employment Opportunity Commission in Management Directive 715.¹ MD-715 requires the heads of all federal agencies to issue "a written policy statement expressing their commitment to [equal employment opportunity] and a workplace free of discriminatory harassment,"

¹ The EEOC's actions are legally binding on the Department in its capacity as a federal employer. Section 717 of Title VII of the Civil Rights Act of 1964 and Section 501 of the Rehabilitation Act of 1973 require federal agencies to ensure that they establish and maintain effective programs of equal employment opportunity, and MD-715 represents the EEOC's implementation of these statutes. Accordingly, the heads of other Cabinet agencies have issued the required EEO Statements. See, for example, the EEO Statements of [Secretary Mnuchin](#); [Secretary Perry](#); [Secretary DeVos](#); [Secretary Carson](#); [Secretary Chao](#); [Secretary Acosta](#); [Secretary Wilkie](#); and [Secretary Ross](#).

including discrimination on any protected basis. Such statements are essential not only to the LGBTQ workforce, but also to historically under-represented groups more broadly. For that reason, by letter dated February 27, 2018, an expansive coalition of the Department's affinity groups called on Attorney General Sessions to issue an EEO statement. He never did.²

An agency's EEO statement must affirm that, at a minimum, all employees and applicants for employment will be able to pursue equal employment opportunities regardless of their sex (including sexual orientation, gender identity, and pregnancy), race, religion, color, national origin, age, genetic information, or disability.³ This affirmation is especially important to our members in light of the Department's recent litigating position, which it volunteered "in its capacity as the Nation's largest employer," that Title VII does not protect against discrimination on the basis of sexual orientation or gender identity. Our members need to know whether the Department will continue to honor such protections with respect to its own employees, as applicable under binding EEOC precedent.

Because MD-715 requires agency heads to issue an EEO statement at the beginning of their tenures—and thereafter on an annual basis—now is the appropriate time to formulate a statement that affirms the Department's commitment to a workplace free from discrimination, including discrimination on the basis of sexual orientation, gender identity, and gender expression. We are ready to assist in any way we can.

Declining Morale

DOJ Pride surveyed its membership in October 2018 to assess members' perspectives on working for the Department. The results indicate that morale is low among LGBTQ individuals currently employed in the Department, and that the Department is not recruiting and retaining top LGBTQ talent. The following comments are representative:

- "The DOJ is no longer the welcoming, inclusive environment for LGBTQ employees that it once was."
- "It's harder for gay men and trans people to work in the BOP. The BOP definitely does not attract or very often retain gay men and trans people."
- "Agents attend[ing] the FBI academy that are gay and/or latino are definitely discriminated against and in many cases evaluated more harshly than other new agents and dismissed from the academy."
- "Please do something about the FBI's unfair evaluation process at the FBI Academy. There are many gay agents attending that are dismissed because they are not 'bro-y' or masculine enough."
- "I have had many LGBTQ friends either leave the Department or express disinterest in applying to openings in the Department in the first instance."
- "I am leaving the DOJ in part due to the DOJ's treatment of its LGBTQ employees."

² The Department's EEO website continues to display Attorney General Lynch's EEO Statement, available at <https://www.justice.gov/jmd/file/790081/download>.

³ Information on the EEOC's model EEO program is available at <https://www.eeoc.gov/federal/directives/md715/section1.cfm>.

- “It’s difficult and demoralizing not knowing if your employer really believes LGBTQ people should have antidiscrimination protections (housing, employment, accommodations) or not.”
- “As a department, it doesn’t feel like DOJ welcomes LGBTQ employees to bring their full selves to work.”
- “The fact that the Department has not issued an EEO policy (the one signed by Loretta Lynch is the most recent) is troubling and worrisome.”
- “This administration’s lack of regard for the wellbeing of its LGBTQ employees has led to the predictable result that many LGBTQ employees have left the Department.”
- “I understand that elections have consequences and that I work at an institution that at times takes positions with which I personally disagree. That’s nothing new. But, as the administration’s positions on LGBTQ issues emerged, it would have been a sound management practice for DOJ leadership to take conciliatory actions with LGBTQ employees.”
- “I think more than anything they just don’t think about us at all.”

Only 31% of respondents agreed that “the Department of Justice values its LGBTQ employees,” and only 43% agreed that “the Department of Justice does not discriminate on the basis of sexual orientation or gender identity or expression.” Perhaps the starkest result was that fewer than 10% of respondents agreed that “the Department of Justice attracts and retains the best LGBTQ talent.” Given the crucial role the Department fulfills in our society—enforcing the nation’s laws and administering justice—we are concerned that so many employees who dedicate themselves to the Department do not think the Department values them, or that it attracts the best and brightest of the LGBTQ community.

These statistics and statements point toward a set of issues the Department must address, including morale, recruitment, retention, and fair treatment. DOJ Pride is eager to be a resource for, and a partner with, your office in improving and strengthening the Department on these fronts. We understand that Rachel Bissex will be serving as your office’s liaison to the Department’s affinity groups, and we look forward to raising and discussing these issues with her and others in leadership.

* * *

Congratulations again on your appointment as Attorney General of the United States, and thank you for considering the issues this letter raises. Enclosed is a DOJ Pride-FBI Pride challenge coin that we hope will represent for you the thousands of LGBTQ employees and contractors who rely on your leadership.⁴ We look forward to working with you and your staff to advance our

⁴ The Attorney General is permitted to accept this challenge coin under the regulations governing gifts between employees, which can be found at 5 C.F.R. § 2635. Challenge coins do not fit within the definition of “gifts” in the regulations because they are “items with little intrinsic value, such as plaques, certificates, and trophies, which are intended primarily for presentation.” 5 C.F.R. § 2635.203(b)(2); *see also* 5 C.F.R. § 2635.303(a) (adopting, as part of the prohibition on gifts to superiors, the definition of “gift” from 5 C.F.R. § 2635.203(b)). Even if the challenge coin were considered a gift, the Attorney General would be permitted to accept it because it is being given “on an occasional basis”—the occasion

mutual interest in making the Department of Justice a vibrant and effective workplace that is supportive, fair, and inclusive of all.

Respectfully,

Jason Lee (CIV)
President of DOJ Pride

Gabriel Case (OIG)
Adam Chandler (ATR)
Julie Doctor (BOP)
David Heath (USAO-CT)
Derek Julius (CIV)
Paul Killebrew (CRT)
Avi Kupfer (ENRD)
Tim Laffredi (USTP)
DOJ Pride Board of Directors

cc:

Rachel Bissex, Counselor to the Attorney General and White House Liaison
Office of the Deputy Attorney General
Office of the Associate Attorney General

being his return to the Department of Justice as Attorney General—and is worth less than \$10. 5 C.F.R. § 2635.304(a)(1). The cost of the challenge coin was \$5.