



# EEO Quarterly News You Can Use



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## Special points of interest:

- LGBT Pride Month (June)
- Women's Equality Day (Aug)



## Loss of Member of the EEO Team

The EEO Office would like to say a sad farewell to Ms. Therese Ayers. Therese has been selected for a position in Wiesbaden, Germany. She will be missed.

## Ft Riley EEO Staff

Director: Vacant

Complaints Manager: Ms. Kathy Bellinder (239-2741)

Special Emphasis Program Manager: Mr. Jeffrey Greer (239-3263)

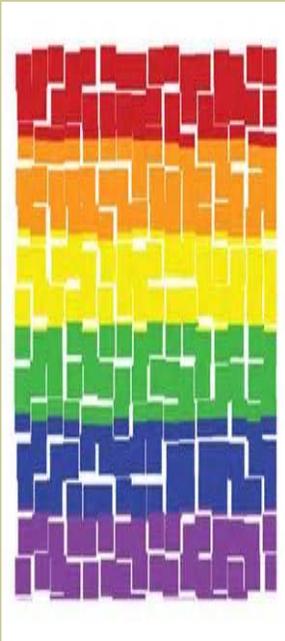
Location: 510 Huebner Road (Grimes Hall), 2nd Floor

EEO WEBSITE: <http://www.riley.army.mil/Units/GarrisonCommand/EqualEmploymentOpportunity.aspx> .

## Fun Facts on Lesbian, Gay, Bisexual, and Transgender (LGBT) Pride Month and Women's Equality Day Fun Facts

**LGBT Monthly Fun Facts:** Lesbian, Gay, Bisexual, and Transgender (LGBT) Pride Month is currently celebrated each year in the month of June to honor the 1969 Stonewall riots in New York City. The Stonewall riots were a tipping point for the Gay Liberation Movement in the United States. The Department of Defense and the Office of Diversity Management have added LGBT Pride Month as an annual observance to be celebrated by military and civilian members of the U.S. Armed Forces. During the month of June, all DOD personnel are encouraged to recognize the accomplishments of all members of its workforce and what this group of individuals has helped achieve by their service to the nation.

**Women's Equality Day Fun Facts:** In 1963, when President Kennedy signed the Equal Pay Act, women were earning 59 cents on the dollar compared to men. Today, women comprise 57 percent of the nation's workforce, yet they are still experiencing a gap in pay compared to men's wages for similar work. The average woman in the U.S. earns about 23 cents less on the dollar than the average man, and recent studies have shown that even when factors like professional specialization, hours worked, and educational and experience levels are held constant, women still earn less than men.



***“It takes no compromise to give people their rights...it takes no money to respect the individual. It takes no political deal to give people freedom. It takes no survey to remove repression.”***  
***– Harvey Milk***

## EEOC and the Enforcement Protections for LGBT Workers

Recent events, including the filing of two EEOC lawsuits on behalf of transgender employees and an amicus brief in the 7th Circuit related to coverage of sexual orientation, have triggered increased interest about protections for lesbian, gay, bisexual and transgender (LGBT) individuals under federal employment-discrimination laws. The information below highlights what you should know about the EEOC's enforcement efforts in this area.

### Overview

The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. These federal laws also prohibit employers from retaliating against workers who oppose discriminatory employment practices - for example, by reporting incidents of sexual harassment to their supervisor or human resources department - or against those who file EEOC charges or cooperate with an EEOC investigation. Also, where these federal laws apply, they protect all workers, regardless of sexual orientation or gender identity.

Employers and employees often have questions about whether discrimination related to LGBT status is prohibited under the laws the EEOC enforces. The Commission's [Strategic Enforcement Plan \(SEP\)](#), adopted by a bipartisan vote in December of 2012, lists "coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply" as an enforcement priority for FY2013-2016. This enforcement priority is consistent with positions the Commission has taken in recent years regarding the intersection of LGBT-related discrimination and Title VII's prohibition on sex discrimination.

In 2012, the EEOC held that discrimination against an individual because that person is transgender (also known as gender identity discrimination) is discrimination because of sex and therefore is prohibited under Title VII of the Civil Rights Act of 1964. See [Macy v. Department of Justice, EEOC Appeal No. 0120120821 \(April 20, 2012\)](#). The Commission has also found that discrimination against lesbian, gay, and bisexual individuals based on sex-stereotypes, such as the belief that men should only date women or that women should only marry men, is discrimination on the basis of sex under Title VII. See [Veretto v. United States Postal Service, EEOC DOC 0120110873 \(July 1, 2011\)](#) (accepting Title VII sex discrimination claim alleging that supervisor harassment was motivated by sexual stereotype that men should only marry women); [Castello v. United States Postal Service, EEOC DOC 0520110649 \(December 20, 2011\)](#) (accepting Title VII sex discrimination claim alleging that supervisor harassment was motivated by sexual stereotype that having relationships with men is an essential part of being a woman); [Complainant v. Dep't of Homeland Sec., EEOC DOC 0120110576 \(August 20, 2014\)](#) (reaffirming prior findings that federal employees discriminated against on the basis of sexual orientation can establish violations of Title VII based on the sex stereotyping theory).

## Helpful Hints for Employees and Managers When Dealing with a Discrimination Allegation

Employees have the right to come to the EEO Office. Employees do not have to take leave, but do have to tell their supervisors that they need to come to the EEO Office. Employees are not obligated to tell their supervisors specifically why they need to go to the EEO Office. Supervisors need to allow an employee to go to the EEO Office but can tell the employee to go the next day if a mission suspense is due that day.

An employee who accuses a manager of discrimination or testifies against a manager in an investigation, hearing or court case cannot be punished, intimidated, disciplined or otherwise harassed for doing so. The legal right to protest against discrimination, whether informally or formally, is protected under Title VII of the Civil Rights Act of 1964, as amended. The accuracy of the allegation will be determined during the hearing or trial.

When an employee files an EEO complaint of discrimination, it is filed against the Secretary of the Army not the manager.

Recommendations for supervising an individual who has filed an EEO complaint that prevents or reduces the possibility of allegations of reprisal or retaliation are:

1. Do not find fault with the employee for using the complaint process.
2. Do not take the action personally.



"If there is one part of my life which gives me more intense satisfaction than another, it is my friendship of more than forty years standing with Susan B. Anthony... Emerson says, 'It is better to be a thorn in the side of your friend than his echo.' If this adds weight and stability to friendship, then ours will endure forever, for we have indeed been thorns in the side of each other... I have had no peace for forty years, since the day we started together on the suffrage expedition in search of woman's place in the National Constitution."—**Elizabeth Cady Stanton**

## Mediation in the Workplace – A Proactive Approach to Preventing Litigation and Promoting a Healthier Work Environment

Mediation is a form of Alternative Dispute Resolution (ADR) that is offered by the U.S. Equal Employment Opportunity Commission (EEOC) as an alternative to the traditional investigative or litigation process. Mediation is an informal process in which a neutral third party assists the opposing parties to reach a voluntary, negotiated resolution of a charge of discrimination. Mediation gives the parties the opportunity to discuss the issues raised in the charge, clear up misunderstandings, determine the underlying interests or concerns, find areas of agreement and, ultimately, to incorporate those areas of agreements into solutions. A mediator does not impose a decision on the parties. Instead, the mediator helps the parties to agree on a mutually acceptable resolution.

### How Mediation Works

An EEOC representative will contact the employee and employer concerning their participation in the program. If both parties agree, a mediation session conducted by a trained and experienced mediator is scheduled. While it is not necessary to have an attorney or other representation in order to participate in EEOC's Mediation Program, either party may choose to do so. It is important that persons attending the mediation session have the authority to resolve the dispute. If mediation is unsuccessful, the charge is investigated like any other charge.

## Advantages of Mediation

### **FREE**

- Mediation is available at no cost to the parties.

### **FAIR AND NEUTRAL**

- Parties have an equal say in the process and decide settlement terms, not the mediator. There is no determination of guilt or innocence in the process.

### **SAVES TIME AND MONEY**

- Mediation usually occurs early in the charge process, and many mediations are completed in one meeting. Legal or other representation is optional but not required.

### **CONFIDENTIAL**

- All parties sign an agreement of confidentiality. Information disclosed during mediation will not be revealed to anyone, including other EEOC investigative or legal staff.

### **AVOIDS LITIGATION**

- Lengthy litigation CAN be avoided. Mediation costs less than a lawsuit and avoids the uncertainty of judicial outcome.

### **FOSTERS COOPERATION**

- Mediation fosters a problem solving approach to complaints and workplace disruptions are reduced. With investigation, even if the charge is dismissed by EEOC, the underlying problems may remain, affecting others in the workforce and human resources staff.

### **IMPROVES COMMUNICATIONS**

- Mediation provides a neutral and confidential setting where both parties can openly discuss their views on the underlying dispute.

### **DISCOVER THE REAL ISSUES IN YOUR WORKPLACE**

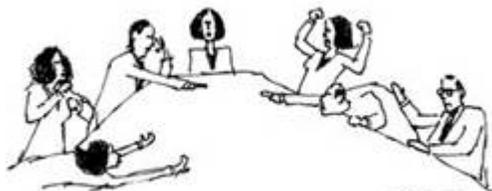
- Parties share information, which can lead to a better understanding of issues affecting the workplace.

### **DESIGN YOUR OWN SOLUTION**

- A neutral third party assists the parties in the reaching a voluntary, mutually beneficial resolution. Mediation can resolve all issues important to the parties, not just the underlying legal dispute.

### **EVERYONE WINS**

- An independent survey showed 96% of all respondents and 91% of all charging parties who used mediation would use it again if offered.



*Mediation, Act I: Posturing*

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## Pregnancy and the Workplace—Fact Sheet

On July 14, 2014 the Equal Employment Opportunity Commission (EEOC) issued Enforcement Guidelines on Pregnancy Discrimination and related issues. The Enforcement Guidance updates prior guidance on this subject in light of legal developments over the past thirty years.

**Pregnancy Discrimination Act (PDA)** of 1978 is an amendment to Title VII of the 1964 Civil Rights Act that expands the definition of sex discrimination to include discrimination based on pregnancy and childbirth. General Guidelines to follow:

- A pregnant woman may not be denied a job solely because she is pregnant, if she is physically able to perform the necessary functions of the job.
- A pregnant employee may not be required to take a leave of absence if she is able to perform her job duties.
- A pregnant employee who requests leave is entitled to it on the same basis that leaves are granted for other temporary medical conditions.
- If an employee cannot perform some of the functions of her job because of pregnancy or a related condition, her employer must allow her to perform modified tasks or an alternate assignment if it provides such opportunities to employees who are temporarily disabled for other conditions.
- Decisions about the welfare of future children must be left to the parents who conceive, bear, support, and raise them rather than the employers who hire those parents. (*UAW v. Johnson Controls*, US Supreme Court 1991) In other words, an employer may not force a woman to go to an alternate duty assignment if she is otherwise able to work just based on fear of harm to the fetus she is carrying.

It is important to point out that the PDA does not require employers to do more for a pregnant employee than they would for other employees' similarly situated with similar temporary health conditions. (*Guarino v. Potter*, 5th Cir. 2004)

Some states (such as California) have adopted additional provisions for pregnant women and the Supreme Court ruled they have the right to do so since the PDA was intended "to construct a floor beneath which pregnancy disability benefits may not drop."

In *Nelson v. Chattahoochee Valley Hospital Society*, 2010, the court held that the PDA does not require the employer to provide specific accommodations for pregnant employees but rather, required that pregnant employees be treated similar to non-pregnant employees position.

With respect to hiring, sick-leave benefits, medical benefits, disability benefits, alternative work assignments, and reinstatement, the PDA requires only that the pregnant employee be treated similarly to other employees that are temporarily disabled. Arguably, to the extent that an employer adopts a policy giving preferential treatment to women who are pregnant, those policies may be challenged as illegal discrimination against males under Title VII.

The **Family and Medical Leave Act (FMLA) of 1993** guarantees 12 weeks of unpaid leave per year to employees for the purpose of caring for a newborn, newly adopted, or seriously ill child. Employers must continue health benefits during this leave and must reinstate the worker to the original position or its equivalent upon the employee's return to work. This law is gender neutral – men and women must be given equal consideration.

