

U.S. Office of Special Counsel (OSC) Information Sheet



Discrimination – 5 U.S.C. § 2302(b)(1)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(1)**. This document does not serve as legal advice and should not be cited as legal authority. Rather, the statute and current case law control with respect to matters discussed here.

WHAT IS (b)(1)?

Section 2302(b)(1) makes it a prohibited personnel practice to discriminate against any employee or applicant for employment based on: 1) **race, color, nationality, religion, age, sex** (including pregnancy, sexual orientation or identity, and gender), **handicapping condition** (or disability); 2) **marital status** (must be some indication that the treatment is related to employee's status); or 3) **political affiliation** (based on affiliation with a party or candidate, not a political issue).

Note: It is OSC's policy to not review complaints involving discrimination based on race, color, religion, sex (including pregnancy, sexual orientation or identity, and gender), national origin, age, or disability (or handicapping condition). Instead, OSC notifies the complainant that they may utilize the Equal Employment Opportunity (EEO) process available at their respective agency. There are instances of egregious or widespread discrimination where OSC may divert from its policy and accept a complaint for investigation or initiate its own investigation.

WHAT IS PROHIBITED?

Examples of section 2302(b)(1) violations include:

- A hiring official asks an applicant about their marital status, and the applicant responds that they are single. The applicant is then not selected for the job. Subsequently, the hiring official reveals that they only hire married applicants, believing that marital status indicates stability and commitment.
- A supervisor has an employee who is Muslim and leaves their desk five times a day for prayer. The supervisor asserts that these breaks are distracting and moves the employee's desk to a secluded area of the office, away from their colleagues.
- An employee who has never disclosed their political affiliation has a "GOP" sticker on their car. Their supervisor notices the sticker and presumes that the employee is a member of the GOP. As a result, the supervisor begins assigning the employee irrelevant tasks and busy work, deliberately excluding them from important projects.

TIPS AND RECOMMENDATIONS

1. Educate and train employees on anti-discrimination policies.
2. Provide clear guidance on the avenues available to employees if they feel that they have experienced discrimination or retaliation for EEO activities.
3. Include political affiliation and marital status discrimination in your agency's anti-discrimination policies. Clearly state that discrimination based on partisan political affiliation and marital status is prohibited.
4. Use clear, objective criteria for performance evaluations, promotions, and assignments to avoid bias based on protected class, marital status, or political affiliation.

For more information on filing a complaint or making a disclosure: call 202-804-7000, 800-872-9855 or submit a question at info@osc.gov. Please note that OSC may not provide advice regarding merit of a complaint or whether the allegation meets the statutory definitions.

Updated and detailed information on OSC and its procedures can be found on OSC's website at <https://osc.gov>.

For information about training and the 2302c Certification Program please contact OSC's Outreach Unit via email at certification@osc.gov.