

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



Discrimination – 5 U.S.C. § 2302(b)(10)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(10)**. 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)(10)?

Section 2302(b)(10) makes it a prohibited personnel practice to discriminate against employees or applicants for employment based on “conduct which does not adversely affect the performance of the employee or applicant, or the performance of others,” including sexual orientation and gender identity.

An agency bears a significant burden to demonstrate that any employment action is justified by a clear nexus between the employee's conduct—whether on-duty or off-duty—and the efficiency of the service.

WHAT IS PROHIBITED?

Examples of section 2302(b)(10) violations *might* include:

- An employee shares with his coworkers that he has purchased new guns for hunting. The supervisor, who supports extensive gun control and feels uncomfortable with this information, reassigns the employee to a shift with fewer opportunities for interaction with colleagues.
- An employee brings his husband to a work party. The supervisor sees that the employee is in a same sex relationship and gets uncomfortable with the employee's sexuality. When the employee gets to work the next week, he finds that he has been reassigned to a different location by the supervisor.
- Rachel informs her supervisor Jenny that she is pregnant. Shortly thereafter, Jenny restricts Rachel to teleworking one day a week because she believes that pregnancy will limit Rachel's ability to do her job and wants to be able to observe Rachel performing her duties.

TIPS AND RECOMMENDATIONS

1. Discern the mission impact(s) before taking any employment action based on an employee's conduct.
2. Educate employees and managers on maintaining professionalism and avoiding discrimination based on non-job-related behavior.
3. Apply disciplinary actions consistently and fairly.
4. Maintain thorough documentation of all disciplinary actions and their rationale to ensure transparency and accountability.

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.