

**Estado Libre Asociado de Puerto Rico
Alianza Municipal de Servicios Integrados (AMSI), Inc.**



**PROCEDURE FOR COMPLIANCE WITH PUBLIC
POLICY ON ERADICATION OF DISCRIMINATION
BASED ON SEXUAL ORIENTATION OR GENDER
IDENTITY, IN CONFORMITY WITH LAW
NO. 22-2013**

2015



**ÁREA LOCAL DE DESARROLLO
LABORAL
CAGUAS - GUAYAMA**



**VETERANS' EMPLOYMENT AND TRAINING SERVICE
UNITED STATES DEPARTMENT OF LABOR**

I. INTRODUCTION

Discrimination is the act of making a distinction or segregation that threatens equal opportunities. It is normally used to refer to the violation of the rights of individuals due to social, racial, religious, sexual orientation or gender identity, among others.

Those affected in most cases are individuals belonging to identified minorities. These minorities are small groups within a society. Sometimes these groups are not so small, but they are still rejected.

Gender discrimination or **sexism** is a social phenomenon since representation from both sexes is necessary for this situation to occur; there is no **gender** equality from which to denounce discrimination or inequality. On the contrary, the basis of this phenomenon is the supposed supremacy of one of the genders. While the term "**sex**" refers to the biological differences between men and women, "**gender**" describes the roles, functions, rights, and responsibilities established by society, and that communities consider appropriate for both men and women.

Sexual orientation, sexual tendency or sexual inclination refers to a pattern of sexual, erotic, emotional or loving attraction to a certain group of people defined by their sex. Sexual orientation and its study can be divided into three main parts, **heterosexuality** (attraction to people of the opposite sex), **homosexuality** (attraction to people of the same sex), and **bisexuality** (attraction to people of both sexes).

II. LEGAL BASE

- The Fourteenth Amendment, Section 1, of the United States Constitution sets out that all persons under its jurisdiction shall have the benefit of equal protection of the laws.
- Title VII of the Civil Rights Act of 1964, 42 USCA 2000e et seq., as recognized in *Price Waterhouse v Hopkins*, 490 US 228 (1989), prohibits discrimination based on gender stereotypes as a form of discrimination based on sex. Likewise, according to interpretations of the Equal Employment Opportunity Commission (EEOC), discrimination against a transgender person (discrimination based on gender identity) is also prohibited by Title VII. *Macy v Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012); *Veretto v U.S. Postal Service*, EEOC Appeal No. 0120110873 (July 1, 2011); *Castello v Postal Service*, EEOC Request No. 052110649 (December 20, 2011).
- The Mathew Shepard and James Byrd, Jr, Hate Crime Prevention Act of 2009, 18 USC & 249, includes gender, sexual orientation, and gender identity in federal hate crimes law.
- At the federal level, Executive Order 11476, section 1, as amended by Executive Orders 13087 and 13152, prohibits discrimination based on sexual orientation in federal employment. The prohibition is also implicitly contained in the Civil Service Reform Act 1978 (CSRA), which prohibits discrimination in personnel actions by various categories, including any conduct that does not adversely affect the performance of the applicant or employee, which has been understood as that it covers sexual orientation and gender identity.
- In *United States v Windsor*, 570 US (2013), the Supreme Court ruled that the federal government cannot deny state-recognized same-sex marriages of the betrothed, those federal benefits recognized to heterosexual marriages.

- Article II, Section 1 of the Constitution of the Commonwealth of Puerto Rico sets out that the dignity of the human being is inviolable. All humans equal before the Law. No discrimination may take place for reasons of race, color, sex, birth, origin or social condition, or political or religious ideas. Both the laws and the system of public instruction will embody these principles of essential human equality.
- Article II, Section 16 of the Constitution of the Commonwealth of Puerto Rico sets out the right of every person to be protected from risks to their health or personal integrity at work.
- Law No. 22-2013 establishes as a public policy of the Commonwealth of Puerto Rico the prohibition on discrimination based on sexual orientation or gender identity.
- Law No. 23-2013 extended the protection of Law 54 to same-sex couples, so in the workplace the victim is protected against adverse actions by personnel due to being a victim or being perceived as a victim of domestic violence.
- Article 66 of the Criminal Code of 2012 sets out that if any crime committed is motivated by gender, sexual orientation, or gender identity, among other classifications, prejudice will be considered as aggravating.
- Rule 171 of Criminal Procedure includes as an aggravating circumstance of the crime, having been motivated by prejudice by gender, sexual orientation, or gender identity, among others.
- Executive Order 2008-57 establishes as public policy in the public service and the provision of public services of the Executive Branch, the prohibition of discrimination based on gender or gender identity, as well as on real or perceived sexual orientation.
- Executive Order 2013-10 establishes the eradication of all types of discrimination in granting the benefit of medical insurance to public employees of the Executive Branch, including classifications based on marital status.

- Canon 5 of the Judicial Ethics Canons of the Commonwealth of Puerto Rico bans judges from engaging in conduct that constitutes discrimination on the grounds of sexual orientation or gender and imposes on them the obligation to prevent people who attend the Court and the personnel under its direction engage in this conduct.
- Special Order No. 2010-5 of the Puerto Rico Police recognizes as public policy the protection of the civil rights of each citizen, regardless of their gender and sexual orientation, among others.
- The Universal Declaration on Sexual Orientation and Gender Identity of December 18, 2008, calls on all States and International Human Rights Organizations to commit to protecting the human rights of people whose gender identity and sexual orientation have served as the basis for manifestations of harassment, violence, exclusion, stigmatization, and prejudice.
- The Yogyakarta Principles, presented at the United Nations in March 2007, promote the inclusion of the categories of sexual orientation and gender identity among the human rights that the organization must protect.

III. PUBLIC POLICY IMPLEMENTATION

The Municipal Alliance of Integrated Services (AMSI), Inc. confirms as public policy, as provided by **Law No. 22-2013**, the repudiation of discrimination based on sexual orientation or gender identity of participants, service providers, collaborating entities, collaborators, employees or interested persons who in any way receive or attempt to receive the services of AMSI, Inc. In this way, it is reaffirmed that the dignity of the human being is inviolable and that all people are equal before the Law.

IV. PURPOSE

To comply with the obligation of prohibiting discrimination based on gender identity or sexual orientation, as covered in Act No. 22-2013, which amends various labor laws of the Commonwealth of Puerto Rico, AMSI, Inc. adopts this protocol to achieve the following:

- Implement the provisions of Act No. 22-2013, related to discrimination based on gender identity or sexual orientation.
- Educate AMSI, Inc. employees regarding behaviors, expressions, and actions that constitute illegal discrimination based on gender identity or sexual orientation.
- Ensure that all people are treated consistently with the gender identity they have assumed, rather than being judged considering traditional stereotypes assigned to the categories of sex and gender.
- Guide the internal handling process of complaints filed for discrimination based on gender identity or sexual orientation.

V. DEFINITIONS

- **Gender identity** - refers to the way in which people identify and/or recognize themselves regarding their gender, which may or may not correspond to their biological sex or the one assigned at birth. To achieve the purposes of Act No. 22-2013, this definition will be interpreted as broadly as necessary to extend its benefits to all citizens exposed to rejection or pattern of discrimination.
- **Sexual orientation**- means the capacity of each person to feel an emotional, affective, or sexual attraction for people of a gender different from their own or of the same gender, or of more than one gender. To achieve the purposes of Act No. 22-2013, this definition will be interpreted as broadly as necessary to extend its benefits to all citizens exposed to rejection or pattern of discrimination.

VI. GENERAL PROHIBITIONS RELATED TO DISCRIMINATION BY GENDER IDENTITY OR SEXUAL ORIENTATION, IN ACCORDANCE WITH THE PROVISIONS OF THE LAWS AMENDED BY LAW NO. 22-2013

- It will be considered illegal to discriminate against anyone in their place of employment based on their gender identity or sexual orientation. Unlawful discriminatory practices include, but are not limited to the following:
 - Avoid recruiting, selecting, promoting, or retaining candidates for any job.
 - Taking into consideration sexual orientation or gender identity in the evaluation of workers in relation to any labor aspect;

- Suspend, discipline, transfer, or affect the salary, wages, compensation, terms, categories, conditions, or privileges of work.
- Deprive a person or deny employment opportunities or affect an employee.
- Prevent or hinder access to apprenticeship or training or retraining programs.
- Publish, circulate, or allow advertisements, notices, or any other source of dissemination to be published or circulated that denies employment opportunities, directly or indirectly, to these people.
- Participate in or allow verbal or physical harassment or the creation of a hostile environment at work, whether caused by supervisors, employees, volunteers, or visitors to the workplace.
- All harassment and any action or omission that produces a hostile environment based on gender identity and sexual orientation are prohibited. The following behaviors may constitute evidence of unlawful harassment and a hostile environment.
 - Asking questions of a personal nature about the body, physical changes, or sexual practices of any person.
 - Allow the use of equipment or work material, or the work area to produce offensive material or that undermines the integrity of the person.
 - Allow or make jokes or comments with the intention of mocking or making fun of people because of their sexual orientation or gender identity, even if they are not explicitly directed at the victim.
 - Denying access to sanitary facilities or other facilities identified by gender to persons who identify with said gender identity.
 - Requiring people to dress or groom in a way that is inconsistent with their gender identity or that prevents them from expressing their gender identity.

- Gender and name records on job applications
 - Any information related to gender identity or sexual orientation obtained during any official job activity must be kept confidential by the employer.
 - Nothing described herein shall be understood as an impediment for any person to identify their sexual orientation or gender identity in the workplace if they so desire.
- Checking references and history
 - If an entity covered by Act No. 22-2013, gains knowledge through a comparison of references, history or any other means of the sexual orientation or gender identity of an employee, candidate for an employment, it must not use such information to take adverse action against the person and must take the necessary measures to preserve the confidentiality of the information obtained.

VII. DISCLOSURE

- Communicate and disseminate clearly and explicitly the laws and regulations related to gender identity or sexual orientation to all administrative personnel, supervisors, employees, and volunteers, as well as visitors the employees must interact with when performing their functions.
- Provide training on the implementation of the Law.
- Post in a visible place the compendium of laws that the Secretary of Labor and Human Resources will prepare and provide.

- Ensure that all people are treated in unison with the gender identity they have assumed, rather than being judged considering traditional stereotypes assigned to the categories of sex and gender.
- Guide the internal handling process of complaints filed for discrimination based on gender identity or sexual orientation.
- The Human Resources Unit of the Administrative Affairs Area will be responsible for the dissemination of this Protocol.

VIII. VALIDITY

This Protocol to eradicate Discrimination based on Sexual Orientation or Gender Identity will be effective as of its approval.

IX. APPROVAL

This Protocol is approved with the signature of the Executive Administrator and the President of the Local Board, today **February 3, 2015.**

Ana G. Arias Villasuso
AID Director

Joaquín Santiago Santos
Executive Administrator

Vicky Cintrón de Azize
President, Local Board