

National Aeronautics and Space Administration
Headquarters
Washington, DC 20546-001



August 3, 2015

Reply to Attn of: Office of Diversity and Equal Opportunity

TO: Officials-in-Charge of Headquarters Offices
Directors, NASA Centers

FROM: Associate Administrator for Diversity and Equal Opportunity

SUBJECT: NASA Processing of Discrimination Claims Based on Sexual Orientation

The Equal Employment Opportunity Commission (EEOC) recently rendered a precedent setting decision in Baldwin v. Department of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015). In an effort to keep the Agency apprised of developments in civil rights law and how they will impact the Agency's equal employment opportunity (EEO) efforts, we are providing the following information regarding this decision.

In the Baldwin case, the EEOC found that discrimination based on sexual orientation is covered under Title VII of the Civil Rights Act of 1964 (Title VII), as amended, as a form of sex-based discrimination. Specifically, the EEOC found that "discrimination on the basis of sexual orientation is premised on sex-based preferences, assumptions, expectations, stereotypes, or norms," and that "sexual orientation" as a concept cannot be defined or understood without reference to sex. As a result, the EEOC found explicitly that "sexual orientation discrimination is sex discrimination because it necessarily entails treating an employee less favorably because of the employee's sex."

This decision has significant implications for the federal processing of claims of discrimination based on sexual orientation. Heretofore, claims of discrimination based on sexual orientation were determined to be outside the scope of Title VII unless they fell within a narrowly carved exception of claims involving a person's non-conformity with sex stereotypes. As a result, such claims were processed under NASA's separate internal sexual orientation procedures, which afforded far less protection than that of Title VII.

In accordance with Baldwin, individuals who believe they have been discriminated against because of their sexual orientation must be advised they now have a right to have their claims processed under Title VII as sex discrimination. What that means is that individuals now have a right to request a hearing before an EEOC administrative judge or appeal NASA's decision to the EEOC. Although the EEOC makes clear that agencies may maintain, and employees may still utilize, separate internal agency sexual orientation procedures, as noted, such procedures afford fewer protections than the Title VII complaints process. Therefore, individuals with Agency responsibility for counseling and advising aggrieved individuals must ensure all those

raising claims of discrimination based on sexual orientation are fully advised of their rights to file under Title VII.

Please distribute this announcement broadly and ensure all individuals responsible for counseling and processing claims of discrimination are apprised of this significant change. If you have any questions, please contact Danette Mincey, Director, Complaints Management Division, at 202-358-2180 or by email at danette.l.mincey@nasa.gov.



Brenda R. Manuel

cc:
EO Directors