



July 31, 2023

Dear Federal Agency Leaders,

As of the writing of this letter, over 500 laws targeting the LGBTQI+ community for exclusion or differential treatment have been proposed in 45 states across the nation.¹ Over 220 of those laws specifically target transgender individuals, and more than 70 have become law.² These discriminatory state laws directly harm federal employees, their families, and the mission of the federal government. For transgender federal employees and federal employees with transgender children in particular, these discriminatory state laws have real world implications such as preventing them from accessing critical and life-saving gender-affirming care, using bathrooms consistent with their gender identity, and even feeling safe at work and at home.

As the federal government's largest interagency employee-run organization that supports LGBTQI+ federal employees, Pride in Federal Service (PFS)³ writes to urge federal agencies to take immediate action to support transgender employees and their families. By adopting the recommendations below, the federal government can live up to its promise of being a model employer that ensures equitable treatment for *all* employees—regardless of one's sexual orientation or gender identity—and sets an example for other private and public sector employers in America and around the world. While the federal government is already required by federal law to ensure transgender employees are free from harassment and discrimination in the workplace,⁴ agency leaders are empowered—and should feel *obligated*—to do more to protect the health and safety of their employees and their families. Doing so would not require any new laws or regulations. Agencies already have significant discretion over numerous existing authorities and workplace flexibilities which could be leveraged to support employees located in states with discriminatory laws. For example, agencies can:

- **Provide Hardship Transfer Opportunities to Transgender Employees in States with Discriminatory Laws:** Hardship transfers can be requested by any employee experiencing personal problems at their current duty station. Historically, hardship transfers have been granted

¹ See “LGBTQ+ Americans Under Attack: A Report and Reflection on the 2023 State Legislative Session” available at <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Anti-LGBTQ-Legislation-Impact-Report.pdf>; see also “Mapping Attacks on LGBTQ in U.S. State Legislatures” available at <https://www.aclu.org/legislative-attacks-on-lgbtq-rights>; see also <https://www.lgbtmap.org> “Equality Maps” and then “Choose an Issue” for a periodically updated map view with citations to different discriminatory state actions.

² Note that these figures do not include other state actions, such as executive orders targeting the LGBTQI+ community.

³ PFS is an interagency work group focused on equal employment opportunity and engagement related to sexual orientation, gender identity, and gender expression. Our mission is to provide a forum for sharing best practices and resources and coordinating on federal diversity, equity, inclusion, and accessibility efforts related to equal opportunity for all members of the LGBTQI+ community. PFS is independent of any agency of the government and is nonpartisan and independent of any other non-profit, political or lobbying group, association, or organization.

⁴ See *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020) (holding that an employer who fires an individual employee merely for being gay or transgender violates Title VII of the Civil Rights Act of 1964); see also “Sexual Orientation and Gender Identity (SOGI) Discrimination” available at <https://www.eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination>.

to employees that need to access adequate medical facilities for specific treatments for themselves or family members, to care for sick or dying family members, and for many other reasons that create an undue hardship on employees or their families. Discriminatory state laws prohibiting transgender individuals from accessing critical gender-affirming care indisputably create serious undue burdens on those individuals. Agencies should therefore reevaluate their hardship transfer policies and support employees seeking hardship transfers because they cannot access gender affirming care for themselves or a family member and/or who are facing discriminatory treatment or harassment at their current duty location.

- **Expand Remote Work Opportunities for Transgender Employees Whose Duty Locations Are In States With Discriminatory Laws:** According to guidance⁵ from the Office of Personnel Management, remote work is an alternative work arrangement that allows an employee to perform their official duties at an approved alternative worksite away from an agency worksite, without regularly returning to the agency worksite during each pay period. Not only does remote work provide many significant benefits to agencies,⁶ it can also be leveraged to help transgender employees who may be facing discrimination or harassment at their current duty location.⁷ Agencies should therefore consider the unique circumstances and challenges currently facing many transgender employees who live in states with discriminatory laws, along with the many benefits to agencies, when evaluating or re-evaluating requests for remote work.
- **Leverage Leave Flexibilities for Employees Seeking Gender-Affirming Care for Themselves or Members of Their Families:** While agencies are already required to grant certain types of leave for qualifying medical reasons,⁸ they also have numerous leave flexibilities at their disposal. For example, agencies have the discretion to permit liberal leave policies, such as granting Leave Without Pay (LWOP), for employees that may have exhausted other forms of leave. Agencies may also offer alternative work schedules—including as part of the reasonable accommodations⁹

⁵ See “2021 Guide to Telework and Remote Work in the Federal Government Leveraging Telework and Remote Work in the Federal Government to Better Meet Our Human Capital Needs and Improve Mission Delivery” available at <https://www.telework.gov/guidance-legislation/telework-guidance/telework-guide/guide-to-telework-in-the-federal-government.pdf>.

⁶ Remote work provides many benefits to agencies, including 1) retention of highly talented employees who must move outside of an agency’s geographic location for personal reasons (e.g., military spouses, those who must care for a relative or loved one who lives elsewhere), 2) recruitment of employees outside an agency’s geographic location with specialized skills, who may not want or be able to relocate for personal reasons, 3) agency cost savings related to transit subsidy benefits, locality pay, real estate, and other facility expenses, paired with employee cost savings related to commuting and local cost of living expenses, and 4) increased employee productivity and engagement, and greater ability to support continuity of operation.

⁷ Transgender employees also benefit from expanded remote work because it allows them to access private locations for telehealth therapy appointments for treatment of gender dysphoria (requires specialist) and flexibility for seeking and receiving gender-affirming care. It should be noted that some bottom surgeries require ongoing post-surgery care that is very intensive for months after the initial surgery and will continue (although decrease in frequency) for life. So, unless there is a private room offered on-site (similar to a lactation room), the employee may not be able to return in-person. Remote work provides much needed flexibility that allows transgender employees to return to work gradually following surgery and to access nearby services during their transition (e.g., hair removal).

⁸ Importantly, under the Family and Medical Leave Act (FMLA) eligible employees are already entitled to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

⁹ It should be noted that people with gender dysphoria are entitled under the Americans with Disabilities Act and the Rehabilitation Act to receive reasonable accommodations and are protected from discrimination.

process—that permit employees to work longer days and have certain days off. Agencies should therefore grant LWOP and other forms of discretionary leave to employees who must travel outside their duty location to receive gender-affirming care. Agencies are further encouraged to facilitate leave donation and recipient programs. Importantly, however, these programs often require (or allow) the donor to specify the name of the recipient, which can be especially harmful and invasive for employees seeking gender-affirming care. Therefore, agencies should realign these programs to follow an anonymous donor pool policy whereby eligible donor recipients receive a portion of the donated leave in proportion to the employees need and urgency.

- **Excuse Work-Related Travel For Transgender Employees:** Some transgender employees are required to travel as part of their official duties. However, employees required to travel to states with discriminatory laws are more likely to experience discrimination, such as harassment or being forced to use public restrooms inconsistent with their gender identity. Agencies have a duty to prevent workplace discrimination and address it when it occurs, including when employees are on work-related travel. To avoid potential liability and protect employee safety, agencies should carefully consider requests from transgender employees who wish not to travel to states with discriminatory laws in effect. Further, if a transgender employee is required to travel and has an itinerary that routes them (via stops, layovers, etc.) through states with discriminatory laws, agencies should allow travel exceptions and justifications that permit the employee to re-route through other states. Agencies should actively notify employees who travel of this option.
- **Mandate Inclusive Policies at Shared Federal and State Facilities:** The federal government is already required to ensure inclusive policies in federally owned and leased spaces.¹⁰ Even so, the federal government shares many facilities and offices with state and local governments and other non-federal entities, including in locations with discriminatory laws in effect. As a result, transgender employees assigned to these duty locations are more likely to face differential treatment. Agencies should therefore explicitly mandate inclusive workplace policies (including restroom access, dress and appearance standards, pronoun use, etc.) at all shared facilities and offices consistent with applicable federal law and guidance.¹¹ Agencies which share space with non-federal entities should notify those entities that inclusive policies must be adhered to in all shared spaces. Agencies should also post notices in the common spaces of all shared facilities and offices. If any state or local governments fail to comply, agencies should consider terminating their shared space agreements.
- **Expand Access to Employee Assistance Programs for Transgender Employees:** Every federal agency has an Employee Assistance Program (EAP), which is a voluntary, confidential program that helps employees work through various life challenges that may adversely affect job performance, health, and personal well-being to optimize the organization’s success.¹² EAP

¹⁰ See Executive Order 13988 “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation” (“It is the policy of my Administration to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce Title VII and other laws that prohibit discrimination on the basis of gender identity or sexual orientation.”).

¹¹ See “Guidance Regarding Gender Identity and Inclusion in the Federal Workplace” available at <https://www.opm.gov/policy-data-oversight/diversity-equity-inclusion-and-accessibility/reference-materials/guidance-regarding-gender-identity-and-inclusion-in-the-federal-workplace.pdf> also, “Sanitary and Related Facilities” [Guidance Regarding Gender Identity and Inclusion in the Federal Workplace \(opm.gov\)](https://www.opm.gov/policy-data-oversight/diversity-equity-inclusion-and-accessibility/reference-materials/guidance-regarding-gender-identity-and-inclusion-in-the-federal-workplace.pdf)

¹² See “Employee Assistance Programs” available at <https://www.opm.gov/policy-data-oversight/worklife/employee-assistance-programs/>

services include assessments, counseling, and referrals for additional services to employees with personal and/or work-related concerns, such as stress, financial issues, legal issues, family problems, office conflicts, and alcohol and substance use disorders. EAPs also often work with management and supervisors providing advanced planning for situations, such as organizational changes, legal considerations, emergency planning, and response to unique traumatic events. Agencies should expand access to EAPs and ensure their programs are providing sufficient support to transgender employees. Agencies should further consider training EAP specialists, managers and supervisors, and human resources professionals on the unique needs of transgender employees.¹³

- **Consider Other Possible Workplace Flexibilities To Support Transgender Employees and Their Families:** Agencies should conduct a wholesale review of their existing authorities to determine what other possible workplace flexibilities can be leveraged to eliminate workplace barriers caused by discriminatory state laws and support transgender employees and their families.

PFS strongly encourages agencies to adopt the recommendations above as interim measures that will protect the health and safety of transgender federal employees and their families and promote an inclusive workplace for all. These recommendations are supported by existing authorities and are consistent with the Biden-Harris Administration’s policy “to combat unlawful discrimination and eliminate disparities that harm LGBTQI+ individuals and their families, defend their rights and safety, and pursue a comprehensive approach to delivering the full promise of equality for LGBTQI+ individuals...”¹⁴ Moreover, as the Administration has recognized, the federal workforce should represent the diversity of the American people. However, the goal of a diverse workforce—one that is free from barriers to equal opportunity—is put at risk when states pass and enforce laws that target transgender individuals and forces them to consider resigning from their jobs because they can no longer remain at their current duty station.¹⁵

The Biden-Harris Administration has recognized the “unrelenting political and legislative attacks at the State level—on LGBTQI+ children and families in particular—threaten the civil rights gains of the last half century and put LGBTQI+ people at risk. These attacks defy our American values of liberty and dignity, corrode our democracy, and threaten basic personal safety.”¹⁶ PFS wholeheartedly agrees and respectfully requests that federal agencies take immediate action to protect federal employees and their families by adopting the recommendations above.

Sincerely,

The PFS Leadership Team¹⁷

¹³ See Executive Order 14035 (requiring “[t]he head of each agency... in coordination with the Director of OPM, [to] ensure that existing employee support services equitably serve LGBTQ+ employees, including, as appropriate, through the provision of supportive services for transgender and gender non-conforming and non-binary employees who wish to legally, medically, or socially transition.”).

¹⁴ Executive Order 14075 on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex (LGBTQI+) Individuals.

¹⁵ Executive Order 14035 on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce.

¹⁶ Executive Order 14075 on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex (LGBTQI+) Individuals.

¹⁷ The recommendations set forth in this document represent the personal opinions of PFS leadership and do not represent an official opinion by the United States government.